

A. C. Banerjee

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Indian Constitutional Documents 1757-1947

Edited by

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PREFACE

Indian Constitutional Documents was originally published in two volumes. The first volume covered the period 1757—1858 ; the second volume dealt with the constitutional developments in India under the British Crown (1858—1945). When it became necessary to reprint the book in a larger form it was divided into three volumes: Volume I, 1757—1858 ; Volume II, 1858—1917 ; Volume III, 1917—1939. Documents relating to the post-1939 period were printed in my books: *The Cabinet Mission in India*, *The Constituent Assembly of India* and *The Making of the Indian Constitution*. In the third edition Volume III, enlarged by addition of some new documents, was brought down to 1935. Documents relating to the period 1935—1947 are now presented to the readers, with Introduction and Notes, in a new Volume (Volume IV). In its present form *Indian Constitutional Documents* covers the entire period of British rule in India.

A. C. BANERJEE

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INTRODUCTION

Provincial Autonomy (1937-39)

The Federal Scheme¹ contained in the Act of 1935 had to be kept in abeyance for an indefinite period because it was not acceptable either to the Congress or to the Muslim League and the Princes were reluctant to commit themselves to loss of autocratic privileges. But the Provincial Scheme,² which the Muslim League had decided to "utilise for what it is worth,"³ was put in operation from April 1, 1937. The provisions of the Act were supplemented by the Royal Instruments of Instructions to the Governor-General and the Provincial Governors.⁴

Although the Congress reiterated "its rejection of the new Constitution in its entirety" and continued to "lay stress on the nation's demand for a Constituent Assembly", it could not escape the logic of facts when the official decision to hold elections for the Provincial Legislatures under the new Act came to be known. It decided to put forward candidates without committing itself to accept or to reject office in the event of success at the polls.⁵

In the elections the Congress secured an absolute majority in the Legislative Assemblies of five Provinces (Madras, the United Provinces, the Central Provinces, Bihar, Orissa) and a working majority in another (Bombay). In two other Provinces (North-West Frontier Province, Assam) it emerged as the largest single party. The question of office acceptance now came to the front. The Congress agreed to accept office on a specific condition, *viz.* a public assurance that the Provincial "Governor will not use his special powers of interference or set aside the advice of Ministers in regard to constitutional activities." This was intended to nullify in practice the exercise by the Governor of his "discretion" and "individual judgment" under the Act. The British

¹ Document No. 1, pp. 2—19.

² Document No. 1, pp. 19—32.

³ Document No. 5.

⁴ Document Nos. 2, 3.

⁵ Document No. 4.

Government contended that no such assurance could be given without amendment of the Act, but the Congress held that it "did not contemplate any amendment of the Act for the purpose of the required assurances".⁶ The refusal of the majority party to assume the responsibility of office created a deadlock which the Governors resolved temporarily by the appointment of minority Ministries, a political expedient of doubtful constitutional propriety. But the Governor-General, Lord Linlithgow, was very anxious to prove the worth of the constitutional scheme of which he himself was one of the framers.⁷ In an elaborate statement⁸ he gave assurances which, though regarded by the Congress as unsatisfactory, created a situation in which (so the Congress hoped) "it will not be easy for the Governors to use their special powers".⁹ Congress Ministries were then formed in seven Provinces (Madras, Bombay, U.P., C.P., Bihar, Orissa, N.-W.F.P.); Assam followed a year later (September, 1938). The temporary crisis regarding the release of political prisoners in U.P. and Bihar¹⁰ brought out the tension which Lord Linlithgow's assurances had not succeeded in eliminating completely.

Only three Provinces (Bengal, the Punjab, N.-W.F.P.) remained outside the pale of Congress ascendancy, but not one of the Ministries formed in these Provinces was controlled or even dominated by the Muslim League. Indeed, the League was then just coming out of the wilderness and it was simply through negative criticism of the Congress that Mr. Mohammad Ali Jinnah was trying to vitalise it. After rejection by the Congress of the League offer to form coalition Ministries¹¹ he found in the policy and work of the Congress nothing but a definite plan to establish a Hindu *Raj* in India. "No settlement with the majority is possible", he declared. He "exposed the game" of "Congress Fascism" and levelled some specific charges against the Congress Ministries.¹² These charges were repudiated by the Congress; Mr. Jinnah made no attempt to substantiate them, although he demanded enquiry

⁶ Document No. 6.

⁷ Document No. 9.

⁸ Document No. 7.

⁹ Document No. 6.

¹⁰ Document No. 8.

¹¹ See Coupland, *The Constitutional Problem in India*, Part II, pp. 110—112, 121—123.

¹² Document No. 10.

by a Royal Commission composed of judges. And when the Congress resigned office on the issue of India's participation in Hitler's war he asked "the Mussalmans all over India to observe the 'Day of Deliverance' and thanksgiving as a mark of relief that the Congress regime has at last ceased to function".¹³ Thus opened that serious breach between the Congress and the League which resulted in the establishment of Pakistan in 1947.

War and Constitution-making (1939-45)

The crisis of Hitler's war revealed the width of the gulf which separated the Congress from the British Government.¹⁴ The first stage in Congress policy was to offer conditional support to the prosecution of war against Fascism and Nazism. The statements made by the Governor-General and the Secretary of State,¹⁵ which followed, were considered by the Congress as "wholly unsatisfactory" and "unfortunate", and the Congress Ministers in the Provinces tendered their resignations. This was the second stage in Congress policy ; non-co-operation was not to be supplemented by direct resistance. The Congress Working Committee specifically "warned Congressmen against any hasty action in the shape of civil disobedience, political strikes and the like". For about three years the Congress pursued a halting policy which was neither logical nor effective. It was anxious for the defeat of Fascism, but it was not prepared to co-operate with a Government which did not recognise India's right to freedom. So it ranged itself against the British Government, although practically nothing was done to dislocate the machinery of administration or to hamper the prosecution of war. As soon as the Congress Ministers resigned the administration of Congress-majority Provinces except Assam was taken over by the Governors under Section 93 of the Act of 1935 ; non-Congress Ministries were formed in Assam and Orissa. The third stage in Congress policy was marked by the "Quit India" resolution¹⁶ ; in August, 1942, the Congress felt that "the peril of to-day necessitates the independence of India and the ending of British domination".

¹³ Document No. 15.

¹⁴ Document No. 11.

¹⁵ Document No. 13.

¹⁶ Document No. 20.

Immediately after the commencement of the war the Muslim League laid down its conditions for co-operation with the British Government¹⁷ the most important of which was the revision of "the entire problem of India's future constitution *de novo* in the light of the experience gained by the working of the present provincial constitution of India and developments that have taken place since 1935 or may take place hereafter". Such revision was also contemplated by the Congress, and Mahatma Gandhi declared that "the way to democratic Swaraj lies only through a properly constituted (Constituent) Assembly".¹⁸ And he added: "All resources must be exhausted to reach the Constituent Assembly before direct action is thought of". But Mr. Jinnah was irrevocably opposed to the idea, for in his view the proposed Constituent Assembly "would at best be a packed body manoeuvred and managed by the Congress caucus". And he laid down his basic condition for constitution-making in the following words: ". . . a constitution must be evolved that recognises that there are in India two nations who both must share the governance of their common motherland. . . ."¹⁹ This condition was given a concrete expression in the Pakistan resolution.²⁰

In July, 1940, the Congress put forward two interim demands: (1) "acknowledgement by Great Britain of the complete independence of India"; (2) constitution of "a provisional National Government . . . at the Centre . . . such as to command the confidence of all the elected elements in the Central Legislature and secure the closest co-operation of all the responsible Governments in the Provinces". This proposal was unacceptable to the Muslim League which had already committed itself to the two-nation theory and could not accept a "National Government". The British Government's reply was the "August offer".²¹ The reaction of the Congress found expression in non-violent civil disobedience under Gandhiji's direction. It was felt that the "August offer" was ridiculously out of place in a country demanding complete independence and eager to play its part against triumphant Fascism. The "August offer" was an advance in so

¹⁷ Document No. 12.

¹⁸ Document No. 14.

¹⁹ Document No. 16.

²⁰ Document No. 17.

²¹ Document No. 18.

far as it committed the British Government "to the setting up after the conclusion of the war . . . of a body representative of the principal elements in India's national life in order to devise the framework of the new constitution"; it was a repudiation of the Act of 1935. At the same time it was declared that "large and powerful elements in India's national life" could not be coerced into submission to any Government whose authority was "directly denied" by them. In effect, it was a veto conceded to Mr. Jinnah who used it skilfully during the next seven years.

The next step on the part of the British Government was the expansion of the Governor-General's Executive Council which, on Lord Linlithgow's own admission, "did not have any basis other than administrative convenience".²² The increase in the proportion of Indians was described by the Secretary of State as a "change in the spirit, if not in the letter, of the Constitution", but no political party—not even the Muslim League—regarded it in that light.

The spectacular success of Japan during the early months of 1942 and pressure from Washington compelled the British Government to make a serious attempt to end the deadlock in India. The inner story of Sir Stafford Cripps' Mission²³ has been partly revealed in Mr. Jawaharlal Nehru's *Discovery of India*. Lord Linlithgow and the Civil Service sabotaged the plan. The leaders of the Congress thought that they were asked to be "liveried camp-followers" of the Viceroy. They could not think of accepting that position "at any time and more especially at this time". So Sir Stafford Cripps returned to London, leaving India in the grip of unprecedented frustration and excitement.

The Congress could no longer postpone the adoption of an effective policy of opposition to a Government which thought in terms of old diplomacy even at a time when the Japanese were knocking at the gates of India. Lord Linlithgow, however, did not allow this policy to take shape. The Government which he represented could not prevent the appearance of the Japanese invaders on the border of Assam, nor could it prevent the disastrous Bengal famine of 1943. But it was strong enough to crush the opposition of the Congress. The passing of the "Quit

²² Document No. 18.

²³ Document No. 19.

India'' resolution²⁴ was followed by the arrest of the Congress leaders. Violence on the part of the leaderless people provoked counter-violence on the part of the Government.

But that resolution gave a new turn to Indian history. The old talk about Dominion Status²⁵ was quietly forgotten, and it was recognised that the multi-coloured problems of India, including the communal problem, could not be solved as long as British troops occupied Indian soil. The constitution of free India was to be framed by Indians alone; it was not to be dictated by England. This fundamental change in the situation came to be realised even by British political leaders, who probably felt that their exhausted country could no longer keep under control 400 millions of exasperated Indians. But old memories and old prejudices die slowly, specially when they are emphasised by powerful bodies like the British mercantile community and bureaucracy in India.

For three years—from the Cripps Mission to the Simla Conference—there was a practical interregnum in the efforts of the British Government to bring about a political settlement in India. Lord Linlithgow was succeeded by Lord Wavell in October, 1943. His military foresight grasped the dangers inherent in the demand for partition which had become the corner stone of the policy of the Muslim League under Mr. Jinnah's uncompromising leadership. He said: "You cannot alter geography . . . India is a natural unit".²⁶ Immediately after this Viceregal pronouncement Mahatma Gandhi made strenuous efforts to secure Mr. Jinnah's agreement to a communal settlement.²⁷ The Gandhi-Jinnah correspondence proved, if proofs were still needed, that a stage had been reached when no agreed settlement was possible.

After the War (1945-46)

When the war came to an end in Europe Lord Wavell made a fresh attempt to break the deadlock after consultation with the British Government. He released the members of the Congress Working Committee and placed before a conference of represen-

²⁴ Document No. 20.

²⁵ Even in August, 1941, the Secretary of State, Mr. Amery, spoke of India attaining Dominion Status.

²⁶ Document No. 21.

²⁷ Document No. 22.

tatives of various political parties a plan which was intended primarily to reconstruct the Executive Council of the Governor-General.²⁸ The failure of the Simla Conference, which was ostensibly due to the inability of the Congress to meet the rising demands of the Muslim League, should be attributed really to Lord Wavell's refusal to withdraw from Mr. Jinnah his right to veto India's constitutional progress on the basis of unity.

The coming of the Labour Party to power in England changed the course of British policy towards India. A Parliamentary delegation visited India in the winter of 1945-46 with a view to collecting first-hand impressions about the political situation in this country. After the return of the delegation to London an official announcement was made in both Houses of Parliament declaring the intention of the British Government "to send out to India a special mission of Cabinet Ministers . . . to act in association with the Viceroy".²⁹ The object of the Cabinet Mission, as stated by Prime Minister Attlee, would be "to set up a machinery in agreement with Indians whereby the Indian people themselves will decide their destinies". A further statement made by Mr. Attlee³⁰ elucidated the policy of the Labour Government. The most significant point in this statement was the declaration that a minority could not be allowed to place a veto on the advance of the majority. It seemed to foreshadow the reversal of the traditional British policy towards the Muslim League.

The members of the Cabinet Mission—Lord Pethick-Lawrence, Sir Stafford Cripps and Mr. A. V. Alexander—arrived at Karachi on March 23, 1946. After holding preliminary discussions with the Viceroy and the Provincial Governors they gave interviews to Indian political leaders of all parties and groups. Then a conference with the leaders of the Congress and the Muslim League was held at Simla. On May 12 the Conference definitely failed to arrive at a compromise.³¹ The decision of the Mission³² was announced on May 16.

That decision was obviously based on "the voluminous evi-

²⁸ Document No. 23.

²⁹ Document No. 24.

³⁰ Document No. 25.

³¹ Document Nos. 26, 27

³² Document No. 28.

dence" submitted to the Mission. The Mission noted "an almost universal desire, outside the supporters of the Muslim League, for the unity of India"; it noted also the persistent demand of the Muslim League for partition of the country. So a scheme was devised which, in the words of the Secretary of State, made it "possible for the Muslims to secure the advantages of a Pakistan without incurring the dangers inherent in the division of India". It was only to be expected that this compromise would not give full satisfaction to any political party or community.

The Cabinet Mission Plan had three integral parts. First, the Mission laid down the "basic form" of a new Constitution for "a Union of India, embracing both British India and the States". This Constitution was to be framed by a Constituent Assembly of which the composition and the procedure of work were laid down in the Plan. Secondly, "while the Constitution-making proceeded", an "interim Government having the support of the major political parties" would carry on the administration of the country. Thirdly, the Rulers of the Princely States were assured that "Paramountcy can neither be retained by the British Crown nor transferred to the new Government (of India)".

This composite Plan, viewed in retrospect, seems to have been quite unsuitable for practical implementation. It was evident within a few weeks that it was open to conflicting interpretations. At the first stage the Congress rejected the scheme of Interim Government but decided to "join the proposed Constituent Assembly with a view to framing the Constitution of a free, united and democratic India".³³ The Muslim League did not commit itself either way to the scheme of Interim Government but decided to "accept the (Cabinet Mission) scheme" and "join the constitution-making body".³⁴

Immediately afterwards it became clear that the two principal political organisations approached the Cabinet Mission Plan from the standpoint of contradictory premises. The Congress thought of "a free, united and democratic India" and insisted upon the sovereignty of the Constituent Assembly implying that it had the capacity of "broadening the Centre."³⁵ The Muslim League wanted

³³ Document No. 30.

³⁴ Document No. 29.

³⁵ Document No. 31.

to participate in Constitution-making "in the hope that it would ultimately result in the establishment of complete sovereign Pakistan" and was afraid of the "brute majority" of the Congress in the Constituent Assembly.³⁶ As soon as this fundamental difference became clear the Muslim League withdrew its acceptance of the Cabinet Mission Plan and decided to launch "Direct Action".³⁷ An explanatory statement issued by the Congress³⁸ served no purpose so far as the expected change in League policy was concerned.

Meanwhile the elections to the Constituent Assembly had taken place. Out of 210 "General" seats (in 11 Governor's Provinces) the Congress captured 199, 2 seats were captured by the Unionist party of the Punjab (in alliance with the Congress), 1 seat was captured by the Communist party, 2 seats were captured by the anti-Congress Scheduled Castes Federation, and the remaining 6 seats were captured by independent candidates. Of the 4 seats reserved for 4 Chief Commissioner's Provinces, 3 were captured by Congress nominees (one of whom was a Muslim) and 1 was captured by an independent candidate. Out of 78 Muslim seats the League captured 73, the Congress captured 3, the Unionist party of the Punjab (in alliance with the Congress) captured 1 and the Krishak Praja party of Bengal captured 1. Of the 4 seats reserved for the Sikhs 3 went to the nominees of the Akali party (in alliance with the Congress) and 1 went to a Congress nominee. Thus, in an assembly consisting of 296 members the Congress could count upon the allegiance of 212 and the League whip³⁹ was accepted by 73; of the remaining 11 members no less than 6 members were likely to follow the Congress.

This commanding position of the Congress was characterised by Mr. Jinnah as "brute majority". But Lord Pethick-Lawrence told the House of Lords on July 18, 1946: "The Congress has always insisted on the national character of their organisation and this is fully demonstrated by their nomination of personnel in the Provincial Assemblies—I mean national as opposed to communal

³⁶ Document No. 32.

³⁷ Document No. 33.

³⁸ Document No. 34.

³⁹ The Krishak Praja nominee joined the League sometime after his election.

character". When the Congress nominated candidates for the Constituent Assembly it did not confine its choice either to Hindus or to *bona fide* Congressmen. It selected Caste Hindus, Scheduled Caste Hindus, Adibasis, Indian Christians, Anglo-Indians, Parsis—in fact, men from all communities. It selected men who had never served the Congress; indeed, among its nominees were men who had actively opposed it in the political sphere. That it spread its net so wide was a clear testimony to its earnest desire to act as a true national organisation in the interest of all sections of the people. That its nomination was accepted by men of different communities and conflicting views proved beyond doubt that it enjoyed the confidence of the country as a whole. The policy of the Muslim League was in sharp contrast with this confident liberalism of the Congress. No one but a confirmed Leaguer was favoured with Mr. Jinnah's nomination. So the League stood completely isolated from all non-Muslims as also from all Muslims who did not subscribe to the Pakistan creed.

When the League found itself in complete isolation from all non-Muslims as also from all nationalist Muslims it naturally became doubtful about its success in the Constituent Assembly. The result was the threat of "Direct Action" which, as Sardar Patel said on August 1, 1946, "was not aimed at the British but at the Congress". Two weeks later—on August 16—"Direct Action" in Calcutta synchronised with the "Great Calcutta Killing". *The Statesman* wrote on August 20, 1946: "The origin of the appalling carnage and loss in the capital of a great Province, we believe, the worst communal rioting in India's history, was a political demonstration by the Muslim League. Bengal's is a Muslim League Ministry . . . its conduct before the riots stands open to the inference—not only by its political opponents—that it was divided in mind whether rioting of some sort would be good or bad".

While Calcutta was being reduced to "bloody shambles" the Interim Government was being formed by Lord Wavell and Mr. Nehru in Delhi.⁴⁰ As the League had withdrawn its acceptance of the Cabinet Mission Plan the Congress was the only party entitled to form the Interim Government in terms of the following announcement of Lord Wavell (June 16, 1946): "In the event of

⁴⁰ Document No. 35.

the two major parties or either of them proving unwilling to join in the setting up of a Coalition Government . . . it is the intention of the Viceroy to proceed with the formation of an Interim Government which will be as representative as possible of those willing to accept the statement of May 16." The Interim Government, composed of 12 members,⁴¹ with Mr. Nehru as Vice-President, took office on September 2, 1946. But 5 League nominees (including 1 Scheduled Caste Hindu) were allowed to join the Interim Government on October 26, 1946, although the League did not agree to join the Constituent Assembly. Mahatma Gandhi found himself "forced to wonder whether they had come into the Cabinet also to fight". This suspicion proved to be well founded. Within three weeks of the League's entry into the Interim Government Mr. Nehru publicly complained against his League colleagues.

In the meantime the League's "Direct Action" had spread from Calcutta to East Bengal; the Hindus in the districts of Noakhali and Tipperah suffered terribly in life, honour and property (October, 1946). Soon afterwards the Hindus in several districts of Bihar fell upon the Muslim minority. Under Mr. Nehru's direction the Congress Government of Bihar adopted very stern measures (including the imposition of collective fines) to punish the rioters, and even Mr. Churchill praised him for this. But nothing comparable to those measures was adopted by the League Ministry in Bengal.

Partition

Taking advantage of Mr. Jinnah's unwillingness to join the Constituent Assembly which was summoned to meet in Delhi on December 9, 1946, the British Government invited Lord Wavell, two representatives each of the Congress and the League and one Sikh representative to go to London to discuss the basis of a common understanding between the Congress and the League. The main question was whether the Grouping of the Provinces was compulsory under paragraphs 19 (v) and 19 (viii) of the Cabinet Mission Plan. The League view was that Grouping was "com-

⁴¹ Caste Hindus—5 (Congress), Muslims—3 (1 Congress, 2 non-Congress non-League), Scheduled Caste Hindu—1 (Congress), Sikh—1 (Akali), Indian Christian—1 (non-Congress), Parsi—1 (non-Congress).

pulsory",⁴² while the Congress view was that it was not compulsory. On June 15, 1946, Lord Wavell wrote to the President of the Congress that "the statement of 16th May does not make Grouping compulsory" and added : "It leaves the decision to the elected representatives of the Provinces concerned sitting together in Sections".⁴³ After the London Conference, however, the British Government endorsed the League interpretation.⁴⁴ The Congress recorded its protest but decided to carry on the work of the Constituent Assembly.

The first session of the Constituent Assembly held in December, 1946, after the London Conference was not attended by the League members. The adoption of Mr. Nehru's "Objectives resolution"⁴⁵ was postponed as a gesture of conciliation ; it was adopted only when it was clear that the League was determined to boycott the Constituent Assembly. The League resolution of January 31, 1947, was an open challenge to the Congress and a clear invitation to the British Government to put the clock back.⁴⁶

The deadlock had apparently reached its climax, and the British Government thought that it could be resolved only by the use of the surgical knife. Mr. Attlee's statement of February 20, 1947, was a clear commitment in favour of partition.⁴⁷ In vain did the Congress try to save the situation by declaring that there would be no compulsion on any Province or part of a Province to join the proposed Union.⁴⁸

It is interesting to notice the stages in the emergence of Pakistan during the crucial months May 1946—February 1947. So far as the British Government is concerned the transition from unity—recommended by the Cabinet Mission—to partition—practically recognised as inevitable in Mr. Attlee's statement—is clearly related to intensification of pressure tactics by the Muslim League. Lord Wavell admitted League nominees to the Interim Government immediately after the "Great Calcutta Killing" although they were not at all entitled to this privilege after the League's clear

⁴² See p. 229.

⁴³ See p. 264.

⁴⁴ Document No. 36.

⁴⁵ Document No. 37.

⁴⁶ Document No. 36.

⁴⁷ Document No. 38.

⁴⁸ Document No. 39.

rejection of the Cabinet Mission Plan. Mr. Attlee supported the League view on Grouping of Provinces although Lord Wavell—a member of the Cabinet Mission—had earlier supported the Congress view. The League was allowed to create obstruction within the Interim Government and to provoke riots in the Muslim-majority Provinces—in the Punjab and the North-West Frontier Province, for instance—without undertaking the obligation of Constitution-making on the lines laid down by the Cabinet Mission. The contrast between Mr. Attlee's two statements—March 15, 1946, and February 20, 1947,—deserves careful consideration.⁴⁹

Lord Mountbatten succeeded Lord Wavell with special instructions 'to arrange the transfer of power, to united India if possible, to divided India if necessary. He took office on March 24, 1947. Lord Mountbatten found that the Cabinet Mission Plan was dead and could not be revived; partition had practically become an accomplished fact. The League had received a fresh impetus from Mr. Attlee's statement of February 20. The Congress saw a serious threat to peace in the riots provoked by the League. Experience of dissensions within the Interim Government convinced the Congress leaders that co-operation with the League was not possible. He was able to persuade the Congress and the Sikhs to accept partition. The League swallowed it although it involved the partition of Provinces (Bengal and the Punjab) to which Mr. Jinnah was so long opposed. The Congress swallowed it because there appeared to be no other method of preventing large-scale bloodshed throughout the country. The agreed arrangements were laid down in the Mountbatten Plan.⁵⁰ Legal effect was given to the Plan by the Indian Independence Act.⁵¹

Could this squandering away of unity, politically the most precious legacy of British rule, have been prevented by Congress co-operation with the British Government in the prosecution of war? It is a tragedy that the Congress, with all its active hostility towards Fascism, failed to secure from Britain such political assurances as would have allowed the Congress Ministers to remain in office during the critical years following the declaration of war. Even in those fateful days the British Government brought in the

⁴⁹ Document Nos. 25, 38.

⁵⁰ Document Nos. 40, 41, 42, 63.

⁵¹ Document No. 44.

Muslim League and the Princes to counteract the claims of the Congress. Instead of co-operation the Congress got a challenge and accepted it. For several years both the British Government and the Congress exhausted themselves in fruitless hostility. When exhausted Britain felt it necessary to come to terms with the Congress reinvigorated by popular support, both found in the Muslim League a power that had to be reckoned with.

The Indian States

The Act of 1935, Section 311 (1), defined an Indian State as including "any territory, whether described as a State, an Estate, a jagir or otherwise, belonging to or under the suzerainty of a Ruler who is under the suzerainty of His Majesty and not being a part of British India". The Act provided for the first time for a constitutional relationship between the States and the British Provinces on a federal basis. Actually, however, the Princes were given a veto over the formation of the Federation⁵² because, as Mahatma Gandhi said, they were "bulwarks of the Empire",⁵³ Lord Linlithgow's persuasion⁵⁴ could not secure their acceptance of the Federal Scheme.⁵⁵ As the three most important parties concerned—the Congress, the Muslim League and the Princes—were opposed to the Federal Scheme for different reasons it had to be shelved, at least temporarily. The outbreak of war in Europe provided a convenient escape for the British Government. Lord Linlithgow told the Central Legislature on September 11, 1939, that "the compulsion of the present international situation" left the Government with "no choice but to hold in suspense the work in connection with preparations for federation, while retaining federation as our goal".

Although the Congress regarded the States as "integral parts of India which cannot be separated" and laid down the principle that "the people of the States had the same right of self-determination as those of the rest of India", it adhered to a policy of

⁵² Section 5 of Act of 1935.

⁵³ Document No. 45. See also Document No. 52, *Indian Constitutional Documents*, Vol. III.

⁵⁴ Document No. 47.

⁵⁵ See *Indian Constitutional Documents*, Vol. III, Introduction, pp. xxiii-xxiv.

benevolent neutrality towards "the struggle for liberty within the States".⁵⁶ Yet Lord Linlithgow was afraid that, unless the Princes introduced reforms, the people of the States might "succumb to the Congress agitation". In his speeches to the Princes he made a plea for benevolent administration.⁵⁷

The Princes were not directly concerned with the Cripps Mission or the Simla Conference because the primary object of those negotiations was the immediate reconstruction of the Central Government. But the Cripps Mission provided for the participation of the States in constitution-making.⁵⁸

The Cabinet Mission's negotiations with the Princes⁵⁹ as well as the Indian Independence Act⁶⁰ were based on the principle that Paramountcy could not and would not be transferred to an Indian Government. The legality of this view was contested by Dr. Ambedkar⁶¹ and its legality as also political expediency was questioned by the Congress.⁶² After the transfer of power the statesmanship of Sardar Vallabhbhai Patel cut through legal quibbles and secured the adhesion of the States to the Indian Dominion and, ultimately, their merger in the Indian Union.

⁵⁶ Document No. 46.

⁵⁷ Document No. 47.

⁵⁸ Document No. 19.

⁵⁹ Document No. 48.

⁶⁰ Document No. 44.

⁶¹ Document No. 52.

⁶² Document Nos. 50, 51.

INDIAN CONSTITUTIONAL DOCUMENTS

1. EXTRACTS FROM GOVERNMENT OF INDIA ACT, 1935.

[After the conclusion of the Round Table Conference the British Government published a *White Paper* (March, 1933) containing proposals for reforms which were then submitted for scrutiny to a Joint Select Committee of the two Houses of Parliament. "In essence the majority of the Committee accepted the Government proposals, but emphasized still more the necessity of safeguards . . .".¹ The Report of the Committee² was published in October, 1934.

On December 12, 1934, a motion that a Bill should be submitted to Parliament on the lines of the Joint Parliamentary Committee's Report was carried in both Houses of Parliament. On December 19, 1934, the Bill was introduced by Sir Samuel Hoare. "The passage of the Bill through the House of Commons resulted in certain changes of considerable, though not primary importance". In the House of Lords only one vital change was made with the assent of the Government.

The Bill received the Royal Assent on August 4, 1935. The Act² came into force on April 1, 1937, except Part II (Federation) and Part VII (Federal Railway Authority).]

Part I

Introductory

3.—(1) The Governor-General of India is appointed by His Majesty by a Commission under the Royal Sign Manual and has—

(a) all such powers and duties as are conferred or imposed on him by or under this Act; and

(b) such other powers of His Majesty, not being powers connected with the exer-

The
Governor-General of
India and
His
Majesty's
Representative as
regards
relations
with Indian
States.

¹ See Keith, *Constitutional History of India*, pp. 310-318.

² 25 & 26 Geo. V, C. 42.

cise of the functions of the Crown in its relations with Indian States, as His Majesty may be pleased to assign to him.

(2) His Majesty's Representative for the exercise of the functions of the Crown in its relations with Indian States is appointed by His Majesty in like manner and has such powers and duties in connection with the exercise of those functions (not being powers or duties conferred or imposed by or under this Act on the Governor-General) as His Majesty may be pleased to assign to him.

(3) It shall be lawful for His Majesty to appoint one person to fill both the said offices.

* * * *

Part II

The Federation of India

Chapter I

ESTABLISHMENT OF FEDERATION AND ACCESSION OF INDIAN STATES

Proclama-
tion of
Federation
of India

5.—(1) It shall be lawful for His Majesty, if an address in that behalf has been presented to him by each House of Parliament and if the condition hereinafter mentioned is satisfied, to declare by Proclamation that as from the day therein appointed there shall be united in a Federation under the Crown, by the name of the Federation of India,—

- (a) the Provinces hereinafter called Governors' Provinces; and
- (b) the Indian States which have acceded or may thereafter accede to the Federation;

and in the Federation so established there shall be included the Provinces hereinafter called Chief Commissioners' Provinces.

(2) The condition referred to is that States—

(a) the Rulers whereof will, in accordance with the provisions contained in Part II of the First Schedule to this Act, be entitled to choose not less than fifty-two members of the Council of State; and

(b) the aggregate population whereof, as ascertained in accordance with the said provisions, amounts to at least one-half of the total population of the States as so ascertained,

have acceded to the Federation.

6.—(1) A State shall be deemed to have acceded to the Federation if His Majesty has signified his acceptance of an Instrument of Accession executed by the Ruler thereof, whereby the Ruler for himself, his heirs and successors—

Accession
of Indian
States

(a) declares that he accedes to the Federation as established under this Act, with the intent that His Majesty the King, the Governor-General of India, the Federal Legislature, the Federal Court and any other Federal authority established for the purposes of the Federation shall, by virtue of his Instrument of Accession, but subject always to the terms thereof, and for the purposes only of the Federation, exercise in relation to his State such functions as may be vested in them by or under this Act; and

(b) assumes the obligation of ensuring that due effect is given within his State to the provisions of this Act so far as they are applicable therein by virtue of his Instrument of Accession:

Provided that an Instrument of Accession may be executed conditionally on the establishment of the Federation on or before a specified date, and in that

case the State shall not be deemed to have acceded to the Federation if the Federation is not established until after that date.

(2) An Instrument of Accession shall specify the matters which the Ruler accepts as matters with respect to which the Federal Legislature may make laws for his State, and the limitations, if any, to which the power of the Federal Legislature to make laws for his State, and the exercise of the executive authority of the Federation in his State, are respectively to be subject.

(3) A Ruler may, by a supplementary Instrument executed by him and accepted by His Majesty, vary the Instrument of Accession of his State by extending the functions which by virtue of that Instrument are exercisable by His Majesty or any Federal Authority in relation to his State.

(4) Nothing in this section shall be construed as requiring His Majesty to accept any Instrument of Accession or supplementary Instrument unless he considers it proper so to do, or as empowering His Majesty to accept any such Instrument if it appears to him that the terms thereof are inconsistent with the scheme of Federation embodied in this Act:

Provided that after the establishment of the Federation, if any Instrument has in fact been accepted by His Majesty, the validity of that Instrument or of any of its provisions shall not be called in question and the provisions of this Act shall, in relation to the State, have effect subject to the provisions of the Instrument.

(5) It shall be a term of every Instrument of Accession that the provisions of this Act mentioned in the Second Schedule thereto may, without affecting the accession of the State, be amended by or by authority of Parliament, but no such amendment shall, unless it is accepted by the Ruler in a supplementary Instrument, be construed as extending the

functions which by virtue of the Instrument are exercisable by His Majesty or any Federal Authority in relation to the State.

(6) An Instrument of Accession or supplementary Instrument shall not be valid unless it is executed by the Ruler himself, but, subject as aforesaid, references in this Act to the Ruler of a State include references to any persons for the time being exercising the powers of the Ruler of the State, whether by reason of the Ruler's minority or for any other reason.

(7) After the establishment of the Federation the request of a Ruler that his State may be admitted to the Federation shall be transmitted to His Majesty through the Governor-General, and after the expiration of twenty years from the establishment of the Federation the Governor-General shall not transmit to His Majesty any such request until there has been presented to him by each Chamber of the Federal Legislature, for submission to His Majesty, an address praying that His Majesty may be pleased to admit the State into the Federation.

* * * *

Chapter II

THE FEDERAL EXECUTIVE

The Governor-General

7.—(1) Subject to the provisions of this Act, the executive authority of the Federation shall be exercised on behalf of His Majesty by the Governor-General, either directly or through officers subordinate to him, but nothing in this section shall prevent the Federal Legislature from conferring functions upon subordinate authorities, or be deemed to transfer to the Governor-General any functions conferred by any existing Indian law on any court, judge or officer, or on any local or other authority.

Functions
of
Governor-
General

* * * *

Extent of
executive
authority
of the
Federation

8. (1) Subject to the provisions of this Act, the executive authority of the Federation extends—

- (a) to the matters with respect to which the Federal Legislature has power to make laws;
- (b) to the raising in British India on behalf of His Majesty of naval, military and air forces and to the governance of His Majesty's forces borne on the Indian establishment;
- (c) to the exercise of such rights, authority and jurisdiction as are exercisable by His Majesty by treaty, grant, usage, sufferance or otherwise in and in relation to the tribal areas:

Provided that—

- (i) the said authority does not, save as expressly provided in this Act, extend in any Province to matters with respect to which the Provincial Legislature has power to make laws;
- (ii) the said authority does not, save as expressly provided in this Act, extend in any Federated State save to matters with respect to which the Federal Legislature has power to make laws for that State, and the exercise thereof in each State shall be subject to such limitations, if any, as may be specified in the Instrument of Accession of the State;
- (iii) the said authority does not extend to the enlistment or enrolment in any forces raised in India of any person unless he is either a subject of His Majesty or a native of India or of territories adjacent to India; and
- (iv) commissions in any such force shall be granted by His Majesty save in so far as

he may be pleased to delegate that power by virtue of the provisions of Part I of this Act or otherwise.

(2) The executive authority of the Ruler of a Federated State shall, notwithstanding anything in this section, continue to be exercisable in that State with respect to matters with respect to which the Federal Legislature has power to make laws for that State except in so far as the executive authority of the Federation becomes exercisable in the State to the exclusion of the executive authority of the Ruler by virtue of a Federal law.

Administration of Federal Affairs

9.—(1) There shall be a council of ministers, not exceeding ten in number, to aid and advise the Governor-General in the exercise of his functions, except in so far as he is by or under this Act required to exercise his functions or any of them in his discretion:

**Council of
Ministers**

Provided that nothing in this sub-section shall be construed as preventing the Governor-General from exercising his individual judgement in any case where by or under this Act he is required so to do.

(2) The Governor-General in his discretion may preside at meetings of the council of ministers.

(3) If any question arises whether any matter is or is not a matter as respects which the Governor-General is by or under this Act required to act in his discretion or to exercise his individual judgement, the decision of the Governor-General in his discretion shall be final, and the validity of anything done by the Governor-General shall not be called in question on the ground that he ought or ought not to have acted in his discretion, or ought or ought not to have exercised his individual judgement.

10.—(1) The Governor-General's ministers shall be chosen and summoned by him, shall be sworn as members of the council, and shall hold office during his pleasure.

**Other
provisions
as to
Ministers**

(2) A minister who for any period of six consecutive months is not a member of either Chamber of the Federal Legislature shall at the expiration of that period cease to be a minister.

(3) The salaries of ministers shall be such as the Federal Legislature may from time to time by Act determine and, until the Federal Legislature so determine, shall be determined by the Governor-General:

Provided that the salary of a minister shall not be varied during his term of office.

(4) The question whether any and, if so, what advice was tendered by ministers to the Governor-General shall not be inquired into in any court.

(5) The functions of the Governor-General with respect to the choosing and summoning and the dismissal of ministers, and with respect to the determination of their salaries, shall be exercised by him in his discretion.

**Provisions
as to
defence,
ecclesiastical
affairs, external
affairs and
the tribal
areas**

11.—(1) The functions of the Governor-General with respect to defence and ecclesiastical affairs and with respect to external affairs, except the relations between the Federation and any part of His Majesty's dominions, shall be exercised by him in his discretion, and his functions in or in relation to the tribal areas shall be similarly exercised.

(2) To assist him in the exercise of those functions the Governor-General may appoint counsellors, not exceeding three in number, whose salaries and conditions of service shall be such as may be prescribed by His Majesty in Council.

**Special
responsibilities
of
Governor-
General**

12.—(1) In the exercise of his functions the Governor-General shall have the following special responsibilities, that is to say—

(a) the prevention of any grave menace to the peace or tranquillity of India or any part thereof;

(b) the safeguarding of the financial stability and credit of the Federal Government;

(c) the safeguarding of the legitimate interests of minorities;

(d) the securing to, and to the dependants of, persons who are or have been members of the public services of any rights provided or preserved for them by or under this Act and the safeguarding of their legitimate interests;

(e) the securing in the sphere of executive action of the purposes which the provisions of Chapter III of Part V of this Act are designed to secure in relation to legislation;

(f) the prevention of action which would subject goods of United Kingdom or Burmese origin imported into India to discriminatory or penal treatment;

(g) the protection of the rights of any Indian State and the rights and dignity of the Ruler thereof; and

(h) the securing that the due discharge of his functions with respect to matters with respect to which he is by or under this Act required to act in his discretion, or to exercise his individual judgement, is not prejudiced or impeded by any course of action taken with respect to any other matter.

(2) If and in so far as any special responsibility of the Governor-General is involved, he shall in the exercise of his functions exercise his individual judgement as to the action to be taken.

13.—(1) The Secretary of State shall lay before Parliament the draft of any Instrument of Instructions (including any Instrument amending or revoking an Instrument previously issued) which it is proposed to recommend His Majesty to issue to the Governor-General, and no further proceedings shall be taken in relation thereto except in pursuance of an address presented to His Majesty by both Houses of Parliament praying that the Instrument may be issued.

Provisions
as to Instru-
ment of
Instructions

(2) The validity of anything done by the Governor-General shall not be called in question on the ground that it was done otherwise than in accordance with any Instrument of Instructions issued to him.

Superintendence of
Secretary
of State

14.—(1) In so far as the Governor-General is by or under this Act required to act in his discretion or to exercise his individual judgement, he shall be under the general control of, and comply with such particular directions, if any, as may from time to time be given to him by the Secretary of State, but the validity of anything done by the Governor-General shall not be called in question on the ground that it was done otherwise than in accordance with the provisions of this section.

(2) Before giving any directions under this section the Secretary of State shall satisfy himself that nothing in the directions requires the Governor-General to act in any manner inconsistent with any Instrument of Instructions issued to him by His Majesty.

Financial
Adviser to
Governor-
General

15.—(1) The Governor-General may appoint a person to be his financial adviser.

(2) It shall be the duty of the Governor-General's financial adviser to assist by his advice the Governor-General in the discharge of his special responsibility for safeguarding the financial stability and credit of the Federal Government, and also to give advice to the Federal Government upon any matter relating to finance with respect to which he may be consulted.

(3) The Governor-General's financial adviser shall hold office during the pleasure of the Governor-General, and the salary and allowances of the financial adviser and the members of his staff and their conditions of service shall be such as the Governor-General may determine.

(4) The powers of the Governor-General with respect to the appointment and dismissal of a financial adviser, and with respect to the determination

of his salary and allowances and the members of his staff and their conditions of service, shall be exercised by him in his discretion:

Provided that, if the Governor-General has determined to appoint a financial adviser, he shall, before making any appointment other than the first appointment, consult his ministers as to the person to be selected.

* * * *

Chapter III

THE FEDERAL LEGISLATURE

General

18.—(1) There shall be a Federal Legislature which shall consist of His Majesty, represented by the Governor-General, and two Chambers, to be known respectively as the Council of State and the House of Assembly (in this Act referred to as “the Federal Assembly”).

Constitu-
tion of the
Federal
Legislature

(2) The Council of State shall consist of one hundred and fifty-six representatives of British India and not more than one hundred and four representatives of the Indian States, and the Federal Assembly shall consist of two hundred and fifty representatives of British India and not more than one hundred and twenty-five representatives of the Indian States.

* * * *

(4) The Council of State shall be a permanent body not subject to dissolution, but as near as may be one-third of the members thereof shall retire in every third year in accordance with the provisions in that behalf contained in the said First Schedule.

(5) Every Federal Assembly, unless sooner dissolved, shall continue for five years from the date appointed for their first meeting and no longer, and the expiration of the said period of five years shall operate as a dissolution of the Assembly.

* * * *

Annual
financial
statement

Procedure in Financial Matters

33.—(1) The Governor-General shall in respect of every financial year cause to be laid before both Chambers of the Federal Legislature a statement of the estimated receipts and expenditure of the Federation for that year, in this Part of this Act referred to as the “annual financial statement”.

(2) The estimates of expenditure embodied in the annual financial statement shall show separately—

- (a) the sums required to meet expenditure described by this Act as expenditure charged upon the revenues of the Federation; and
- (b) the sums required to meet other expenditure proposed to be made from the revenues of the Federation,

and shall distinguish expenditure on revenue account from other expenditure, and indicate the sums, if any, which are included solely because the Governor-General has directed their inclusion as being necessary for the due discharge of any of his special responsibilities.

(3) The following expenditure shall be expenditure charged on the revenues of the Federation:

- (a) the salary and allowances of the Governor-General and other expenditure relating to his office for which provision is required to be made by Order in Council;
- (b) debt charges for which the Federation is liable, including interest, sinking fund charges and redemption charges, and other expenditure relating to the raising of loans and the service and redemption of debt;
- (c) the salaries and allowances of ministers, of counsellors, of the financial adviser, of the advocate-general, of chief commissioners, and of the staff of the financial adviser;

- (d) the salaries, allowances, and pensions payable to or in respect of judges of the Federal Court, and the pensions payable to or in respect of judges of any High Court;
 - (e) expenditure for the purpose of the discharge by the Governor-General of his functions with respect to defence and ecclesiastical affairs, his functions with respect to external affairs in so far as he is by or under this Act required in the exercise thereof to act in his discretion, his functions in or in relation to tribal areas, and his functions in relation to the administration of any territory in the direction and control of which he is under this Act required to act in his discretion
 - (f) the sums payable to His Majesty under this Act out of the revenues of the Federation in respect of the expenses incurred in discharging the functions of the Crown in its relations with Indian States;
 - (g) any grants for purposes connected with the administration of any areas in a Province which are for the time being excluded areas;
 - (h) any sums required to satisfy any judgment, decree or award of any court or arbitral tribunal;
 - (i) any other expenditure declared by this Act or any Act of the Federal Legislature to be so charged.
- (4) Any question whether any proposed expenditure falls within a class of expenditure charged on the revenues of the Federation shall be decided by the Governor-General in his discretion.

34.—(1) So much of the estimates of expenditure as relates to expenditure charged upon the reve-

Procedure in
Legislature
with respect
to estimates

nues of the Federation shall not be submitted to the vote of the Legislature, but nothing in this sub-section shall be construed as preventing the discussion in either Chamber of the Legislature of any of those estimates other than estimates relating to expenditure referred to in paragraph (a) or paragraph (f) of sub-section (3) of the last preceding section.

(2) So much of the said estimates as relates to other expenditure shall be submitted in the form of demands for grants to the Federal Assembly and thereafter to the Council of State, and either Chamber shall have power to assent or to refuse assent to any demand, or to assent to any demand subject to a reduction of the amount specified therein:

* * * *

(4) No demand for a grant shall be made except on the recommendation of the Governor-General.

35.—(1) . . . if the Chambers have not assented to any demand for a grant or have assented subject to a reduction of the amount specified therein, the Governor-General may, if in his opinion the refusal or reduction would affect the due discharge of any of his special responsibilities, include in the schedule such additional amount, if any, not exceeding the amount of the rejected demand or the reduction, as the case may be, as appears to him necessary in order to enable him to discharge that responsibility.

* * * *

Chapter IV LEGISLATIVE POWERS OF GOVERNOR-GENERAL

Power of
Governor-
General to
promulgate
Ordinances
during
recess of
Legislature

42.—(1) If at any time when the Federal Legislature is not in session the Governor-General is satisfied that circumstances exist which render it necessary for him to take immediate action, he may promulgate such ordinances as the circumstances appear to him to require:

Provided that the Governor-General—

(a) shall exercise his individual judgement as respects the promulgation of any ordinance under this section if a Bill containing the same provisions would under this Act have required his previous sanction to the introduction thereof into the Legislature; and

(b) shall not, without instructions from His Majesty, promulgate any such ordinance if he would have deemed it necessary to reserve a Bill containing the same provisions for the signification of His Majesty's pleasure thereon.

(2) An ordinance promulgated under this section shall have the same force and effect as an Act of the Federal Legislature assented to by the Governor-General, but every such ordinance—

(a) shall be laid before the Federal Legislature and shall cease to operate at the expiration of six weeks from the re-assembly of the Legislature, or, if before the expiration of that period resolutions disapproving it are passed by both Chambers, upon the passing of the second of those resolutions;

(b) shall be subject to the provisions of this Act relating to the power of His Majesty to disallow Acts as if it were an Act of the Federal Legislature assented to by the Governor-General; and

(c) may be withdrawn at any time by the Governor-General.

(3) If and so far as an ordinance under this section makes any provision which the Federal Legislature would not under this Act be competent to enact, it shall be void.

43. (1) If at any time the Governor-General is satisfied that circumstances exist which render it necessary for him to take immediate action for the purpose of enabling him satisfactorily to discharge his functions in so far as he is by or under this Act required in the exercise thereof to act in his discre-

Power of Governor-General to promulgate Ordinances at any time with respect to certain subjects

tion or to exercise his individual judgement, he may promulgate such ordinances as in his opinion the circumstances of the case require.

(2) An ordinance promulgated under this section shall continue in operation for such period not exceeding six months as may be specified therein, but may by a subsequent ordinance be extended for a further period not exceeding six months.

(3) An ordinance promulgated under this section shall have the same force and effect as an Act of the Federal Legislature assented to by the Governor-General, but every such ordinance—

(a) shall be subject to the provisions of this Act relating to the power of His Majesty to disallow Acts as if it were an Act of the Federal Legislature assented to by the Governor-General;

(b) may be withdrawn at any time by the Governor-General; and

(c) if it is an ordinance extending a previous ordinance for a further period, shall be communicated forthwith to the Secretary of State and shall be laid by him before each House of Parliament.

(4) If and so far as an ordinance under this section makes any provision which the Federal Legislature would not under this Act be competent to enact, it shall be void.

(5) The functions of the Governor-General under this section shall be exercised by him in his discretion.

Power of
Governor-
General
in certain
circum-
stances to
enact Acts

44. (1) If at any time it appears to the Governor-General that, for the purpose of enabling him satisfactorily to discharge his functions in so far as he is by or under this Act required in the exercise thereof to act in his discretion or to exercise his individual judgement, it is essential that provision should be made by legislation, he may by message to both Chambers of the Legislature explain the circumstances which in his opinion render legislation essential, and either—

(a) enact forthwith, as a Governor-General's Act, a Bill containing such provisions as he considers necessary; or

(b) attach to his message a draft of the Bill which he considers necessary.

(2) Where the Governor-General takes such action as is mentioned in paragraph (b) of the preceding sub-section, he may at any time after the expiration of one month enact, as a Governor-General's Act, the Bill proposed by him to the Chambers either in the form of the draft communicated to them or with such amendments as he deems necessary, but before so doing he shall consider any address which may have been presented to him within the said period by either Chamber with reference to the Bill or to amendments suggested to be made therein.

(3) A Governor-General's Act shall have the same force and effect, and shall be subject to disallowance in the same manner, as an Act of the Federal Legislature assented to by the Governor-General and, if and in so far as a Governor-General's Act makes any provision which the Federal Legislature would not under this Act be competent to enact, it shall be void.

(4) Every Governor-General's Act shall be communicated forthwith to the Secretary of State and shall be laid by him before each House of Parliament.

(5) The functions of the Governor-General under this section shall be exercised by him in his discretion.

Chapter V

PROVISIONS IN CASE OF FAILURE OF CONSTITUTIONAL MACHINERY

45. (1) If at any time the Governor-General is satisfied that a situation has arisen in which the government of the Federation cannot be carried on in accordance with the provisions of this Act, he may by Proclamation—

Power of
Governor-
General
to issue
Proclama-
tions

(a) declare that his functions shall to such extent as may be specified in the Proclamation be exercised by him in his discretion;

(b) assume to himself all or any of the powers vested in or exercisable by any Federal body or authority,

and any such Proclamation may contain such incidental and consequential provisions as may appear to him to be necessary or desirable for giving effect to the objects of the Proclamation, including provisions for suspending in whole or in part the operation of any provisions of this Act relating to any Federal body or authority:

Provided that nothing in this sub-section shall authorise the Governor-General to assume to himself any of the powers vested in or exercisable by the Federal Court or to suspend, either in whole or in part, the operation of any provision of this Act relating to the Federal Court.

(2) Any such Proclamation may be revoked or varied by a subsequent Proclamation.

(3) A Proclamation issued under this section—

(a) shall be communicated forthwith to the Secretary of State and shall be laid by him before each House of Parliament;

(b) unless it is a Proclamation revoking a previous Proclamation, shall cease to operate at the expiration of six months:

Provided that, if and so often as a resolution approving the continuance in force of such a Proclamation is passed by both Houses of Parliament, the Proclamation shall, unless revoked, continue in force for a further period of twelve months from the date on which under this sub-section it would otherwise have ceased to operate.

(4) If at any time the government of the Federation has for a continuous period of three years

been carried on under and by virtue of a Proclamation issued under this section, then, at the expiration of that period, the Proclamation shall cease to have effect and the government of the Federation shall be carried on in accordance with the other provisions of this Act, subject to any amendment thereof which Parliament may deem it necessary to make, but nothing in this sub-section shall be construed as extending the power of Parliament to make amendments in this Act without affecting the accession of a State.

(5) If the Governor-General, by a Proclamation under this section, assumes to himself any power of the Federal Legislature to make laws, any law made by him in the exercise of that power shall, subject to the terms thereof, continue to have effect until two years have elapsed from the date on which the Proclamation ceases to have effect, unless sooner repealed or re-enacted by Act of the appropriate Legislature, and any reference in this Act to Federal Acts, Federal laws, or Acts or laws of the Federal Legislature shall be construed as including a reference to such a law.

(6) The functions of the Governor-General under this section shall be exercised by him in his discretion.

Part III

The Governors' Provinces¹

* * * *

Chapter II

THE PROVINCIAL EXECUTIVE

The Governor

48. (1) The Governor of a Province is appointed by His Majesty by a Commission under the Royal Sign Manual. Appoint-
ment of
Governor

¹ Madras, Bombay, Bengal, the United Provinces, the Punjab, Bihar, the Central Provinces and Berar, Assam, the N. W. F. P., Orissa, Sind.

(2) The provisions of the Third Schedule to this Act shall have effect with respect to the salary and allowances of the Governor and the provision to be made for enabling him to discharge conveniently and with dignity the duties of his office.

Executive
authority of
Province

49. (1) The executive authority of a Province shall be exercised on behalf of His Majesty by the Governor, either directly or through officers subordinate to him, but nothing in this section shall prevent the Federal or the Provincial Legislature from conferring functions upon subordinate authorities, or be deemed to transfer to the Governor any functions conferred by any existing Indian law on any court, judge, or officer or any local or other authority.

(2) Subject to the provisions of this Act, the executive authority of each Province extends to the matters with respect to which the Legislature of the Province has power to make laws.

Administration of Provincial Affairs.

Council of
Ministers

50. (1) There shall be a council of ministers to aid and advise the Governor in the exercise of his functions, except in so far as he is by or under this Act required to exercise his functions or any of them in his discretion:

Provided that nothing in this sub-section shall be construed as preventing the Governor from exercising his individual judgment in any case where by or under this Act he is required so to do.

(2) The Governor in his discretion may preside at meetings of the council of ministers.

(3) If any question arises whether any matter is or is not a matter as respects which the Governor is by or under this Act required to act in his discretion or to exercise his individual judgment, the decision of the Governor in his discretion shall be final, and the validity of anything done by the Governor shall not be called in question on the ground that he ought or

ought not to have acted in his discretion, or ought or ought not to have exercised his individual judgement.

51.—(1) The Governor's ministers shall be chosen and summoned by him, shall be sworn as members of the council, and shall hold office during his pleasure. Other provisions as to Ministers

(2) A minister who for any period of six consecutive months is not a member of the Provincial Legislature shall at the expiration of that period cease to be a minister.

(3) The salaries of ministers shall be such as the Provincial Legislature may from time to time by Act determine, and, until the Provincial Legislature so determine, shall be determined by the Governor:

Provided that the salary of a minister shall not be varied during his term of office.

(4) The question whether any, and if so what, advice was tendered by ministers to the Governor shall not be inquired into in any court.

(5) The functions of the Governor under this section with respect to the choosing and summoning and the dismissal of ministers, and with respect to the determination of their salaries, shall be exercised by him in his discretion.

52.—(1) In the exercise of his functions the Governor shall have the following special responsibilities, that is to say— Special responsibilities of Governor

- (a) the prevention of any grave menace to the peace or tranquillity of the Province or any part thereof;
- (b) the safeguarding of the legitimate interests of minorities;
- (c) the securing to, and to the dependants of, persons who are or have been members of the public services of any rights provided or preserved for them by or under this Act, and the safeguarding of their legitimate interests;

- (d) the securing in the sphere of executive action of the purposes which the provisions of Chapter III of Part V of this Act are designed to secure in relation to legislation;
- (e) the securing of the peace and good government of areas which by or under the provisions of this Part of this Act are declared to be partially excluded areas;
- (f) the protection of the rights of any Indian State and the rights and dignity of the Ruler thereof; and
- (g) the securing of the execution of orders or directions lawfully issued to him under Part VI of this Act by the Governor-General in his discretion.

(2) The Governor of the Central Provinces and Berar shall also have the special responsibility of securing that a reasonable share of the revenues of the Province is expended in or for the benefit of Berar, the Governor of any Province which includes an excluded area shall also have the special responsibility of securing that the discharge of his functions in respect of excluded areas is not prejudiced or impeded by any course of action taken with respect to any other matter, any Governor who is discharging any functions as agent for the Governor-General shall also have the special responsibility of securing that the due discharge of those functions is not prejudiced or impeded by any course of action taken with respect to any other matter, and the Governor of Sind shall also have the special responsibility of securing the proper administration of the Lloyd Barrage and Canals Scheme.

(3) If and in so far as any special responsibility of the Governor is involved, he shall, in the exercise of his functions, exercise his individual judgement as to the action to be taken.

53.—(1) The Secretary of State shall lay before Parliament the draft of any Instructions (including any Instructions amending or revoking Instructions previously issued) which it is proposed to recommend His Majesty to issue to the Governor of a Province, and no further proceedings shall be taken in relation thereto except in pursuance of an address presented to His Majesty by both Houses of Parliament praying that the Instructions may be issued.

Provisions
as to Instru-
ment of
Instructions

(2) The validity of anything done by the Governor of a Province shall not be called in question on the ground that it was done otherwise than in accordance with any Instrument of Instructions issued to him.

54.—(1) In so far as the Governor of a Province is by or under this Act required to act in his discretion or to exercise his individual judgement, he shall be under the general control of, and comply with such particular directions, if any, as may from time to time be given to him by, the Governor-General in his discretion, but the validity of anything done by a Governor shall not be called in question on the ground that it was done otherwise than in accordance with the provisions of this section.

Superin-
tendence of
Governor-
General

(2) Before giving any directions under this section, the Governor-General shall satisfy himself that nothing in the directions requires the Governor to act in any manner inconsistent with any Instrument of Instructions issued to the Governor by His Majesty.

* * * *

56. Where it is proposed that the Governor of a Province should by virtue of any powers vested in him make or amend, or approve the making or amendment of, any rules, regulations or orders relating to any police force, whether civil or military, he shall exercise his individual judgement with respect to the proposal, unless it appears to him that the

Provisions
as to Police
rules

proposal does not relate to or affect the organisation or discipline of that force.

57.—(1) If it appears to the Governor of a Province that the peace or tranquillity of the Province is endangered by the operations of any persons committing, or conspiring, preparing or attempting to commit crimes of violence which, in the opinion of the Governor, are intended to overthrow the Government as by law established, the Governor may, if he thinks that the circumstances of the case require him so to do for the purpose of combating those operations, direct that his functions shall, to such extent as may be specified in the direction, be exercised by him in his discretion and, until otherwise provided by a subsequent direction of the Governor, those functions shall to that extent be exercised by him accordingly.

(2) While any such direction is in force, the Governor may authorise an official to speak in and otherwise take part in the proceedings of the Legislature, and any official so authorised may speak and take part accordingly in the proceedings of the Chamber or Chambers of the Legislature, any joint sitting of the Chambers, and any committee of the Legislature of which he may be named a member by the Governor, but shall not be entitled to vote.

(3) The functions of the Governor under this section shall be exercised by him in his discretion.

(4) Nothing in this section affects the special responsibility of the Governor for the prevention of any grave menace to the peace or tranquillity of the Province or any part thereof.

58. The Governor in his discretion shall make rules for securing that no records or information relating to the sources from which information has been or may be obtained with respect to the operations of persons committing, or conspiring, preparing, or attempting to commit, such crimes as are men-

Provisions
as to crimes
of violence
intended to
overthrow
Govern-
ment.

Sources of
certain
information
not to be
disclosed

tioned in the last preceding section, shall be disclosed or given—

- (a) by any member of any police force in the Province to another member of that force except in accordance with directions of the Inspector-General of Police or Commissioner of Police, as the case may be, or to any other person except in accordance with directions of the Governor in his discretion; or
- (b) by any other person in the service of the Crown in the Province to any person except in accordance with directions of the Governor in his discretion.

59.—(1) All executive action of the Government of a Province shall be expressed to be taken in the name of the Governor.

(2) Orders and other instruments made and executed in the name of the Governor shall be authenticated in such manner as may be specified in rules to be made by the Governor, and the validity of an order or instrument which is so authenticated shall not be called in question on the ground that it is not an order or instrument made or executed by the Governor.

Conduct of
business of
Provincial
Govern-
ment

(3) The Governor shall make rules for the more convenient transaction of the business of the Provincial Government, and for the allocation among ministers of the said business in so far as it is not business with respect to which the Governor is by or under this Act required to act in his discretion.

(4) The rules shall include provisions requiring ministers and secretaries to Government to transmit to the Governor all such information with respect to the business of the Provincial Government as may be specified in the rules, or as the Governor may otherwise require to be so transmitted, and in

particular requiring a minister to bring to the notice of the Governor, and the appropriate secretary to bring to the notice of the minister concerned and of the Governor, any matter under consideration by him which involves, or appears to him likely to involve, any special responsibility of the Governor.

(5) In the discharge of his functions under subsections (2), (3) and (4) of this section the Governor shall act in his discretion after consultation with his ministers¹.

Chapter III

THE PROVINCIAL LEGISLATURE

General

Constitu-
tion of
Provincial
Legislature

60.—(1) There shall for every Province be a Provincial Legislature which shall consist of His Majesty, represented by the Governor, and—

(a) in the Provinces of Madras, Bombay, Bengal, the United Provinces, Bihar and Assam, two Chambers;

(b) in other Provinces, one Chamber.

(2) Where there are two Chambers of a Provincial Legislature, they shall be known respectively as the Legislative Council and the Legislative Assembly and where there is only one Chamber, the Chamber shall be known as the Legislative Assembly.

Composi-
tion of
Chambers
of Provin-
cial Legisla-
tures

61.—(1) The composition of the Chamber or Chambers of the Legislature of a Province shall be such as is specified in relation to that Province in the Fifth Schedule to this Act.

(2) Every Legislative Assembly of every Province, unless sooner dissolved, shall continue for five years from the date appointed for their first meeting and no longer, and the expiration of the said period

¹ Similar provision was made by Section 17 for conduct of business of Federal Government.

of five years shall operate as a dissolution of the Assembly.

(3) Every Legislative Council shall be a permanent body not subject to dissolution, but as near as may be one-third of the members thereof shall retire in every third year in accordance with the provision in that behalf made in relation to the Province under the said Fifth Schedule.

* * * *

Chapter IV

LEGISLATIVE POWERS OF GOVERNOR

88.—(1) If at any time when the Legislature of a Province is not in session the Governor is satisfied that circumstances exist which render it necessary for him to take immediate action, he may promulgate such ordinances as the circumstances appear to him to require:

Power of Governor to promulgate Ordinances during recess of Legislature

Provided that the Governor—

(a) shall exercise his individual judgement as respects the promulgation of any ordinance under this section, if a Bill containing the same provisions would under this Act have required his or the Governor-General's previous sanction to the introduction thereof into the Legislature; and

(b) shall not without instructions from the Governor-General, acting in his discretion, promulgate any such ordinance, if a Bill containing the same provisions would under this Act have required the Governor-General's previous sanction for the introduction thereof into the Legislature, or if he would have deemed it necessary to reserve a Bill containing the same provisions for the consideration of the Governor-General.

(2) An ordinance promulgated under this section shall have the same force and effect as an Act of the Provincial Legislature assented to by the Governor, but every such ordinance—

(a) shall be laid before the Provincial Legislature and shall cease to operate at the expiration of six weeks from the re-assembly of the Legislature, or if a resolution disapproving it is passed by the Legislative Council, if any, upon the passing of the resolution or, as the case may be, on the resolution being agreed to by the Council;

(b) shall be subject to the provisions of this Act relating to the power of His Majesty to disallow Acts as if it were an Act of the Provincial Legislature assented to by the Governor; and

(c) may be withdrawn at any time by the Governor.

(3) If and so far as an ordinance under this section makes any provision which would not be valid if enacted in an Act of the Provincial Legislature assented to by the Governor, it shall be void.

Power of
Governor to
promulgate
ordinances
at any time
with
respect to
certain
subjects

89 (1) If at any time the Governor of a Province is satisfied that circumstances exist which render it necessary for him to take immediate action for the purpose of enabling him satisfactorily to discharge his functions in so far as he is by or under this Act required in the exercise thereof to act in his discretion or to exercise his individual judgement, he may promulgate such ordinances as in his opinion the circumstances of the case require.

(2) An ordinance promulgated under this section shall continue in operation for such period not exceeding six months as may be specified therein, but may by a subsequent ordinance be extended for a further period not exceeding six months.

(3) An ordinance promulgated under this section shall have the same force and effect as an Act of the Provincial Legislature assented to by the Governor, but every such ordinance—

(a) shall be subject to the provisions of this Act relating to the power of His Majesty to disallow Acts as if it were an Act of the Provincial Legislature;

(b) may be withdrawn at any time by the Governor; and

(c) if it is an ordinance extending a previous ordinance for a further period, shall be communicated forthwith through the Governor-General to the Secretary of State and shall be laid by him before each House of Parliament.

(4) If and so far as an ordinance under this section makes any provision which would not be valid if enacted in an Act of the Provincial Legislature, it shall be void:

Provided that for the purposes of the provisions of this Act relating to the effect of an Act of a Provincial Legislature which is repugnant to an Act of the Federal Legislature, an ordinance promulgated under this section shall be deemed to be an Act of the Provincial Legislature which has been reserved for the consideration of the Governor-General and assented to by him.

(5) The functions of the Governor under this section shall be exercised by him in his discretion but he shall not exercise any of his powers thereunder except with the concurrence of the Governor-General in his discretion:

Provided that, if it appears to the Governor that it is impracticable to obtain in time the concurrence of the Governor-General, he may promulgate an ordinance without the concurrence of the Governor-General, but in that case the Governor-General in his discretion may direct the Governor to withdraw the ordinance and the ordinance shall be withdrawn accordingly.

90. (1) If at any time it appears to the Governor that, for the purpose of enabling him satisfactorily to discharge his functions in so far as he is by or under this Act required in the exercise thereof to act in his discretion or to exercise his individual judgement, it is essential that provision should be made by legislation,

Power of Governor in certain circumstances to enact Acts

he may by message to the Chamber or Chambers of the Legislature explain the circumstances which in his opinion render legislation essential, and either—

(a) enact forthwith as a Governor's Act a Bill containing such provisions as he considers necessary; or

(b) attach to his message a draft of the Bill which he considers necessary.

(2) Where the Governor takes such action as is mentioned in paragraph (b) of the preceding subsection, he may at any time after the expiration of one month, enact, as a Governor's Act, the Bill proposed by him to the Chamber or Chambers either in the form of the draft communicated to them or with such amendments as he deems necessary, but before so doing he shall consider any address which may have been presented to him within the said period by the Chamber or either of the Chambers with reference to the Bill or to amendments suggested to be made therein.

(3) A Governor's Act shall have the same force and effect, and shall be subject to disallowance in the same manner, as an Act of the Provincial Legislature assented to by the Governor and, if and so far as it makes any provision which would not be valid if enacted in an Act of that Legislature, shall be void:

Provided that, for the purposes of the provisions of this Act relating to the effect of an Act of a Provincial Legislature which is repugnant to an Act of the Federal Legislature, a Governor's Act shall be deemed to be an Act reserved for the consideration of the Governor-General and assented to by him.

(4) Every Governor's Act shall be communicated forthwith through the Governor-General to the Secretary of State and shall be laid by him before each House of Parliament.

(5) The functions of the Governor under this section shall be exercised by him in his discretion,

but he shall not exercise any of his powers thereunder except with the concurrence of the Governor-General in his discretion.

* * * *

Chapter VI

PROVISIONS IN CASE OF FAILURE OF CONSTITUTIONAL MACHINERY

93. (1) If at any time the Governor of a Province is satisfied that a situation has arisen in which the government of the Province cannot be carried on in accordance with the provisions of this Act, he may by Proclamation—

Power of
Governor
to issue
Proclama-
tions

(a) declare that his functions shall, to such extent as may be specified in the Proclamation, be exercised by him in his discretion;

(b) assume to himself all or any of the powers vested in or exercisable by any Provincial body or authority;

and any such Proclamation may contain such incidental and consequential provisions as may appear to him to be necessary or desirable for giving effect to the objects of the Proclamation, including provisions for suspending in whole or in part the operation of any provisions of this Act relating to any Provincial body or authority:

Provided that nothing in this sub-section shall authorise the Governor to assume to himself any of the powers vested in or exercisable by a High Court, or to suspend, either in whole or in part, the operation of any provision of this Act relating to High Courts.

(2) Any such Proclamation may be revoked or varied by a subsequent Proclamation.

(3) A Proclamation under this section—

(a) shall be communicated forthwith to the Secretary of State and shall be laid by him before each House of Parliament;

(b) unless it is a Proclamation revoking a previous Proclamation, shall cease to operate at the expiration of six months:

Provided that, if and so often as a resolution approving the continuance in force of such a Proclamation is passed by both Houses of Parliament, the Proclamation shall, unless revoked, continue in force for a further period of twelve months from the date on which under this sub-section it would otherwise have ceased to operate, but no such Proclamation shall in any case remain in force for more than three years.

(4) If the Governor, by a Proclamation under this section, assumes to himself any power of the Provincial Legislature to make laws, any law made by him in the exercise of that power shall, subject to the terms thereof, continue to have effect until two years have elapsed from the date on which the Proclamation ceases to have effect, unless sooner repealed or re-enacted by Act of the appropriate Legislature, and any reference in this Act to Provincial Acts, Provincial laws, or Acts or laws of a Provincial Legislature shall be construed as including reference to such a law.

(5) The functions of the Governor under this section shall be exercised by him in his discretion and no Proclamation shall be made by a Governor under this section without the concurrence of the Governor-General in his discretion.

* * * *

Part V

Legislative Powers

Chapter I

DISTRIBUTION OF POWERS

99.—(1) Subject to the provisions of this Act, the Federal Legislature may make laws for the whole or any part of British India or for any Federated State, and a Provincial Legislature may make laws for the Province or for any part thereof.

Extent of
Federal
and
Provincial
laws

(2) Without prejudice to the generality of the powers conferred by the preceding sub-section, no Federal law shall, on the ground that it would have extra-territorial operation, be deemed to be invalid in so far as it applies—

(a) to British subjects and servants of the Crown in any part of India; or

(b) to British subjects who are domiciled in any part of India wherever they may be; or

(c) to, or to persons on, ships or aircraft registered in British India or any Federated State wherever they may be; or

(d) in the case of a law with respect to a matter accepted in the Instrument of Accession of a Federated State as a matter with respect to which the Federal Legislature may make laws for that State, to subjects of that State wherever they may be; or

(e) in the case of a law for the regulation or discipline of any naval, military, or air force raised in British India, to members of, and persons attached to, employed with or following, that force, wherever they may be.

100.—(1) Notwithstanding anything in the two next succeeding sub-sections, the Federal Legislature has, and a Provincial Legislature has not, power to make laws with respect to any of the matters enumerated in List I in the Seventh Schedule to this Act (hereinafter called the “Federal Legislative List”).

Subject
matter of
Federal and
Provincial
laws

(2) Notwithstanding anything in the next succeeding sub-section, the Federal Legislature, and, subject to the preceding sub-section, a Provincial Legislature also, have power to make laws with respect to any of the matters enumerated in List III in the said Schedule (hereinafter called the “Concurrent Legislative List”).

(3) Subject to the two preceding sub-sections the Provincial Legislature has, and the Federal Legislature has not, power to make laws for a Province or any part thereof with respect to any of the matters enumerated in List II in the said Schedule (hereinafter called the "Provincial Legislative List").

(4) The Federal Legislature has power to make laws with respect to matters enumerated in the Provincial Legislative List except for a Province or any part thereof.

Extent of
power to
legislate
for States

101. Nothing in this Act shall be construed as empowering the Federal Legislature to make laws for a Federated State otherwise than in accordance with the Instrument of Accession of that State and any limitations contained therein.

Power of
Federal
Legislature
to legislate
if an emer-
gency is
proclaimed

102.—(1) Notwithstanding anything in the preceding sections of this chapter, the Federal Legislature shall, if the Governor-General has in his discretion declared by Proclamation (in this Act referred to as a "Proclamation of Emergency") that a grave emergency exists whereby the security of India is threatened, whether by war or internal disturbance, have power to make laws for a Province or any part thereof with respect to any of the matters enumerated in the Provincial Legislative List:

Provided that no Bill or amendment for the purposes aforesaid shall be introduced or moved without the previous sanction of the Governor-General in his discretion, and the Governor-General shall not give his sanction unless it appears to him that the provision proposed to be made is a proper provision in view of the nature of the emergency.

(2) Nothing in this section shall restrict the power of a Provincial Legislature to make any law which under this Act it has power to make, but if any provision of a Provincial law is repugnant to any provision of a Federal law which the Federal Legislature has under this section power to make, the Federal law, whether passed before or after the

Provincial law, shall prevail, and the Provincial law shall to the extent of the repugnancy, but so long only as the Federal law continues to have effect, be void.

(3) A Proclamation of Emergency—

(a) may be revoked by a subsequent Proclamation;

(b) shall be communicated forthwith to the Secretary of State and shall be laid by him before each House of Parliament; and

(c) shall cease to operate at the expiration of six months, unless before the expiration of that period it has been approved by resolutions of both Houses of Parliament.

(4) A law made by the Federal Legislature which that Legislature would not but for the issue of a Proclamation of Emergency have been competent to make, shall cease to have effect on the expiration of a period of six months after the Proclamation has ceased to operate, except as respects things done or omitted to be done before the expiration of the said period.

103. If it appears to the Legislatures of two or more Provinces to be desirable that any of the matters enumerated in the Provincial Legislative List should be regulated in those Provinces by Act of the Federal Legislature, and if resolutions to that effect are passed by all the Chambers of those Provincial Legislatures, it shall be lawful for the Federal Legislature to pass an Act for regulating that matter accordingly, but any Act so passed may, as respects any Province to which it applies, be amended or repealed by an Act of the Legislature of that Province.

Power of
Federal
Legislature
to legislate
for two
or more
Provinces
by consent

104.—(1) The Governor-General may by public notification empower either the Federal Legislature or a Provincial Legislature to enact a law with res-

Residual
powers of
legislation

pect to any matter not enumerated in any of the Lists in the Seventh Schedule to this Act, including a law imposing a tax not mentioned in any such list, and the executive authority of the Federation or of the Province, as the case may be, shall extend to the administration of any law so made, unless the Governor-General otherwise directs.

(2) In the discharge of his functions under this section the Governor-General shall act in his discretion.

* * * *

Chapter II

RESTRICTIONS ON LEGISLATIVE POWERS

Previous
sanction of
Governor-
General
required
for certain
legislative
proposals

108.—(1) Unless the Governor-General in his discretion thinks fit to give his previous sanction, there shall not be introduced into, or moved in, either Chamber of the Federal Legislature, any Bill or amendment which—

(a) repeals, amends or is repugnant to any provisions of any Act of Parliament extending to British India; or

(b) repeals, amends or is repugnant to any Governor-General's or Governor's Act, or any ordinance promulgated in his discretion by the Governor-General or a Governor; or

(c) affects matters as respects which the Governor-General is, by or under this Act, required to act in his discretion; or

(d) repeals, amends or affects any Act relating to any police force; or

(e) affects the procedure for criminal proceedings in which European British subjects are concerned; or

(f) subjects persons not resident in British India to greater taxation than persons resident in British India or subjects companies not wholly controlled and

managed in British India to greater taxation than companies wholly controlled and managed therein; or

(g) affects the grant of relief from any Federal tax on income in respect of income taxed or taxable in the United Kingdom.

(2) Unless the Governor-General in his discretion thinks fit to give his previous sanction, there shall not be introduced into, or moved in, a Chamber of a Provincial Legislature any Bill or amendment which—

(a) repeals, amends, or is repugnant to any provisions of any Act of Parliament extending to British India; or

(b) repeals, amends or is repugnant to any Governor-General's Act, or any ordinance promulgated in his discretion by the Governor-General; or

(c) affects matters as respects which the Governor-General is by or under this Act, required to act in his discretion; or

(d) affects the procedure for criminal proceedings in which European British subjects are concerned;

and unless the Governor of the Province in his discretion thinks fit to give his previous sanction, there shall not be introduced or moved any Bill or amendment which—

(i) repeals, amends or is repugnant to any Governor's Act, or any ordinance promulgated in his discretion by the Governor; or

(ii) repeals, amends or affects any Act relating to any police force.

(3) Nothing in this section affects the operation of any other provision in this Act which requires the previous sanction of the Governor-General or of a

Governor to the introduction of any Bill or the moving of any amendment.

* * * *

110. Nothing in this Act shall be taken—

Savings

(a) to affect the power of Parliament to legislate for British India, or any part thereof; or

(b) to empower the Federal Legislature, or any Provincial Legislature—

(i) to make any law affecting the Sovereign or the Royal Family, or the Succession to the Crown, or the sovereignty, dominion or suzerainty of the Crown in any part of India, or the law of British nationality, or the Army Act, the Air Force Act, or the Naval Discipline Act, or the law of Prize or Prize courts; or

(ii) except in so far as is expressly permitted by any subsequent provisions of this Act, to make any law amending any provision of this Act, or any Order in Council made thereunder, or any rules made under this Act by the Secretary of State, or by the Governor-General or a Governor in his discretion, or in the exercise of his individual judgement; or

(iii) except in so far as is expressly permitted by any subsequent provisions of this Act, to make any law derogating from any prerogative right of His Majesty to grant special leave to appeal from any court.

* * * *

Part VI

Administrative Relations between Federation, Provinces and States

General

Obligation
of units and
Federation

122—(1) The executive authority of every Province and Federated State shall be so exercised as to secure respect for the laws of the Federal Legislature which apply in that Province or State.

* * * *

(3) Without prejudice to any of the other provisions of this Part of this Act, in the exercise of the executive authority of the Federation in any Province or Federated State regard shall be had to the interests of that Province or State.

123.—(1) The Governor-General may direct the Governor of any Province to discharge as his agent, either generally or in any particular case, such functions in and in relation to the tribal areas as may be specified in the direction.

Governor-General may require Governors to discharge certain functions as his agents.

(2) If in any particular case it appears to the Governor-General necessary or convenient so to do, he may direct the Governor of any Province to discharge as his agent such functions in relation to defence, external affairs, or ecclesiastical affairs as may be specified in the direction.

(3) In the discharge of any such functions the Governor shall act in his discretion.

* * * *

125.—(1) Notwithstanding anything in this Act, agreements may, and, if provision has been made in that behalf by the Instrument of Accession of the State, shall, be made between the Governor-General and the Ruler of a Federated State for the exercise by the Ruler or his officers of functions in relation to the administration in his State of any law of the Federal Legislature which applies therein.

Administration of Federal Acts in Indian States

(2) An agreement made under this section shall contain provisions enabling the Governor-General in his discretion to satisfy himself, by inspection or otherwise, that the administration of the law to which the agreement relates is carried out in accordance with the policy of the Federal Government and, if he is not so satisfied, the Governor-General, acting in his discretion, may issue such directions to the Ruler as he thinks fit.

(3) All courts shall take judicial notice of any agreement made under this section.

Control of
Federation
over
Province
in certain
cases

126.—(1) The executive authority of every Province shall be so exercised as not to impede or prejudice the exercise of the executive authority of the Federation, and the executive authority of the Federation shall extend to the giving of such directions to a Province as may appear to the Federal Government to be necessary for that purpose.

(2) The executive authority of the Federation shall also extend to the giving of directions to a Province as to the carrying into execution therein of any Act of the Federal Legislature which relates to a matter specified in Part II of the Concurrent Legislative List and authorises the giving of such directions:

Provided that a Bill or amendment which proposes to authorise the giving of any such directions as aforesaid shall not be introduced into or moved in either Chamber of the Federal Legislature without the previous sanction of the Governor-General in his discretion.

(3) The executive authority of the Federation shall also extend to the giving of directions to a Province as to the construction and maintenance of means of communication declared in the direction to be of military importance:

Provided that nothing in this sub-section shall be taken as restricting the power of the Federation to construct and maintain means of communication as part of its functions with respect to naval, military and air force works.

(4) If it appears to the Governor-General that in any Province effect has not been given to any directions given under this section, the Governor-General, acting in his discretion, may issue as orders to the Governor of that Province, either the directions previously given or those directions modified in such manner as the Governor-General thinks proper.

made by the Governor-General exercising his individual judgement and, if he is serving in connection with the affairs of a Province, be made by the Governor exercising his individual judgement.

(3) If any such person as aforesaid is suspended from office, his remuneration shall not during the period of his suspension be reduced except to such extent, if any, as may be directed by the Governor-General exercising his individual judgement or, as the case may be, by the Governor exercising his individual judgement.

(4) The salary and allowances of any such person as aforesaid shall, if he is serving in connection with the affairs of the Federation, be charged on the revenues of the Federation and, if he is serving in connection with the affairs of a Province, be charged on the revenues of the Province:

Provided that, if any such person is serving in connection with the railways in India, so much only of his salary and allowances shall be charged on the revenues of the Federation as is not paid out of the Railway Fund.

(5) Pensions payable to or in respect of any such person as aforesaid, and Government contributions in respect of any such person to any pension fund or provident fund, shall be charged on the revenues of the Federation.

(6) No award of a pension less than the maximum pension allowable under rules made under this section shall be made, except in each case with the consent of the Secretary of State.

(7) No rules made under this section shall be construed to limit or abridge the power of the Secretary of State to deal with the case of any person serving His Majesty in a civil capacity in India in such manner as may appear to him to be just and equitable, and no rules made under this section by any person other than the Secretary of State shall be

construed to limit or abridge the power of the Governor-General or, as the case may be, the Governor of a Province to deal with the case of any such person in such manner as may appear to him to be just and equitable:

Provided that, where any rule made under this section is applicable to the case of any person, the case shall not be dealt with in any manner less favourable to him than that provided by the rule.

Rights in
respect of
complaints,
appeals, etc.

248. (1) If any person appointed to a civil service or a civil post by the Secretary of State is aggrieved by an order affecting his conditions of service and on due application to the person by whom the order was made does not receive the redress to which he considers himself entitled, he may, without prejudice to any other mode of obtaining redress, complain, if he is serving in connection with the affairs of the Federation, to the Governor-General and, if he is serving in connection with the affairs of a Province, to the Governor of the Province, and the Governor-General or Governor, as the case may be, shall examine into the complaint and cause such action to be taken thereon as appears to him exercising his individual judgement to be just and equitable.

(2) No order which punishes or formally censures any such person as aforesaid, or affects adversely his emoluments or rights in respect of pension, or decides adversely to him the subject-matter of any memorial, shall be made except, if he is serving in connection with the affairs of the Federation, by the Governor-General, exercising his individual judgement, or, if he is serving in connection with the affairs of a Province, by the Governor of that Province, exercising his individual judgement.

(3) Any person appointed to a civil service or a civil post by the Secretary of State may appeal to the Secretary of State against any order made by any authority in India which punishes or formally

censures him, or alters or interprets to his disadvantage any rule by which his conditions of service are regulated.

(4) Any sums ordered to be paid out of the revenues of the Federation or a Province to or in respect of any such person as aforesaid on an appeal made under this section shall be charged on those revenues.

249. (1) If by reason of anything done under this Act the conditions of service of any person appointed to a civil service or a civil post by the Secretary of State have been adversely affected, or if for any other reason it appears to the Secretary of State that compensation ought to be granted to, or in respect of, any such person, he or his representatives shall be entitled to receive from the revenues of the Federation, or if the Secretary of State so directs, from the revenues of a Province, such compensation as the Secretary of State may consider just and equitable.

Compensation

(2) Any sum payable under this section from the revenues of the Federation or the revenues of a Province shall be charged on the revenues of the Federation or, as the case may be, that Province.

(3) For the avoidance of doubt it is hereby declared that the foregoing provisions of this section in no way prohibit expenditure by the Governor-General, or, as the case may be, the Governor, from the revenues of the Federation or a Province by way of compensation to persons who are serving or have served His Majesty in India in cases to which those provisions do not apply.

* * * *

Part XI

The Secretary of State, His Advisers and His Department

278. (1) There shall be a body of persons appointed by the Secretary of State, not being less

Advisers to
Secretary
of State

than three nor more than six in number, as the Secretary of State may from time to time determine, whose duty it shall be to advise the Secretary of State on any matter relating to India on which he may desire their advice.

(2) One-half at least of the persons for the time being holding office under this section as Advisers of the Secretary of State shall be persons who have held office for at least ten years under the Crown in India and have not last ceased to perform in India official duties under the Crown more than two years before the date of their respective appointments as Advisers under this section.

(3) Any person appointed as an Adviser to the Secretary of State shall hold office for a term of five years and shall not be eligible for reappointment:

Provided that—

(a) any person so appointed may by writing under his hand resign his office to the Secretary of State;

(b) the Secretary of State may, if he is satisfied that any person so appointed has by reason of infirmity of mind or body become unfit to continue to hold his office, by order remove him from his office.

(4) A person for the time being holding office as Adviser to the Secretary of State shall not be capable of sitting or voting in either House of Parliament.

(5) There shall be paid out of moneys provided by Parliament to each of the Advisers of the Secretary of State a salary of thirteen hundred and fifty pounds a year, and also to any of them who at the date of his appointment was domiciled in India a subsistence allowance of six hundred pounds a year.

(6) Except as otherwise expressly provided in this Act, it shall be in the discretion of the Secretary of State whether or not he consults with his Advisers on any matter, and, if so, whether he consults with

them collectively or with one or more of them individually, and whether or not he acts in accordance with any advice given to him by them.

(7) Any provision of this Act which requires that the Secretary of State shall obtain the concurrence of his Advisers shall be deemed to be satisfied if at a meeting of his Advisers he obtains the concurrence of at least one-half of those present at the meeting, or if such notice and opportunity for objection as may be prescribed has been given to those Advisers and none of them has required that a meeting shall be held for discussion of the matter.

In this sub-section "prescribed" means prescribed by rules of business made by the Secretary of State after obtaining at a meeting of his Advisers the concurrence of at least one-half of those present at the meeting.

(8) The Council of India as existing immediately before the commencement of Part III of this Act shall be dissolved.

* * * *

Part XII

Miscellaneous And General

The Crown and the Indian States

285. Subject in the case of a Federated State to the provisions of the Instrument of Accession of that State, nothing in this Act affects the rights and obligations of the Crown in relation to any Indian State.

286. (1) If His Majesty's Representative for the exercise of the functions of the Crown in its relations with Indian States requests the assistance of armed forces for the due discharge of those functions, it shall be the duty of the Governor-General in the exercise of the executive authority of the Federation to cause the necessary forces to be

Saving for rights and obligations of the Crown in its relations with Indian States
Use of His Majesty's forces in connection with discharge of the functions of the Crown in its relations with Indian States

employed accordingly, but the net additional expense, if any, incurred in connection with those forces by reason of that employment shall be deemed to be expenses of His Majesty incurred in discharging the said functions of the Crown.

(2) In discharging his functions under this section the Governor-General shall act in his discretion.

* * * *

SEVENTH SCHEDULE

Legislative Lists

LIST I

FEDERAL LEGISLATIVE LIST

Sections
100, 104

1. His Majesty's naval, military and air forces borne on the Indian establishment and any other armed force raised in India by the Crown, not being forces raised for employment in Indian States or military or armed police maintained by Provincial Governments; any armed forces which are not forces of His Majesty, but are attached to or operating with any of His Majesty's naval, military or air forces borne on the Indian establishment; central intelligence bureau; preventive detention in British India for reasons of State connected with defence, external affairs, or the discharge of the functions of the Crown in its relations with Indian States.

2. Naval, military and air force works; local self-government in cantonment areas (not being cantonment areas of Indian State troops), the regulation of house accommodation in such areas, and, within British India, the delimitation of such areas.

3. External affairs; the implementing of treaties and agreements with other countries; extradition, including the surrender of criminals and accused persons to parts of His Majesty's dominions outside India

4. Ecclesiastical affairs, including European cemeteries.

5. Currency, coinage and legal tender.

6. Public debt of the Federation.

7. Posts and telegraphs, including telephones, wireless, broadcasting, and other like forms of communication: Post Office Savings Bank.

8. Federal Public Services and Federal Public Service Commission.

9. Federal pensions, that is to say, pensions payable by the Federation or out of Federal revenues.

10. Works, lands and buildings vested in, or in the possession of, His Majesty for the purposes of the Federation (not being naval, military or air force works), but, as regards property situate in a Province, subject always to Provincial legislation, save in so far as Federal law otherwise provides, and, as regards property in a Federated State held by virtue of any lease of agreement with that State, subject to the terms of that lease of agreement.

11. The Imperial Library, the Indian Museum, the Imperial War Museum, the Victoria Memorial, and any similar institution controlled or financed by the Federation.

12. Federal agencies and institutes for the following purposes, that is to say, for research, for professional or technical training, or for the promotion of special studies.

13. The Benares Hindu University and the Aligarh Muslim University.

14. The Survey of India, the Geological, Botanical and Zoological Surveys of India; Federal meteorological organizations.

15. Ancient and historical monuments, archaeological sites and remains.

16. Census.

17. Admission into, and emigration and expulsion from, India, including in relation thereto the regulation of the movements in India of persons who are not British subjects domiciled in India, subjects of any Federated State, or British subjects domiciled in the United Kingdom; pilgrimages to places beyond India.

18. Port quarantine; seamen's and marine hospitals, and hospitals connected with port quarantine.

19. Import and export across customs frontiers as defined by the Federal Government.

20. Federal railways; the regulation of all railways other than minor railways in respect of safety, maximum and minimum rates and fares, station and service terminal charges, interchange of traffic and the responsibility of railway administrations as carriers of goods and passengers; the regulation of minor railways in respect of safety and the responsibility of the administrations of such railways as carriers of goods and passengers.

21. Maritime shipping and navigation, including shipping and navigation on tidal waters; Admiralty jurisdiction.

22. Major ports, that is to say, the declaration and delimitation of such ports, and the constitution and powers of Port Authorities therein.

23. Fishing and fisheries beyond territorial waters.

24. Aircraft and air navigation; the provision of aerodromes; regulation and organisation of air traffic and of aerodromes.

25. Lighthouses, including lightships, beacons and other provision for the safety of shipping and aircraft.

26. Carriage of passengers and goods by sea or by air.

27. Copyright, inventions, designs, trade-marks and merchandise marks.

28. Cheques, bills of exchange, promissory notes and other like instruments.

29. Arms, firearms, ammunition.

30. Explosives.

31. Opium, so far as regards cultivation and manufacture, or sale for export.

32. Petroleum and other liquids and substances declared by Federal law to be dangerously inflammable, so far as regards possession, storage and transport.

33. Corporations, that is to say, the incorporation, regulation and winding-up of trading corporations, including banking, insurance and financial corporations, but not including corporations owned or controlled by a Federated State and carrying on business only within that State or co-operative societies, and of corporations, whether trading or not, with objects not confined to one unit.

34. Development of industries, where development under Federal control is declared by Federal law to be expedient in the public interest.

35. Regulation of labour and safety in mines and oil-fields.

36. Regulation of mines and oilfields and mineral development to the extent to which such regulation and development under Federal control is declared by Federal law to be expedient in the public interest.

37. The law of insurance, except as respects insurance undertaken by a Federated State, and the regulation of the conduct of insurance business, except as respects business undertaken by a Federated State; Government insurance, except so far as undertaken by a Federated State, or, by virtue

of any entry in the Provincial Legislative List or the Concurrent Legislative List by a Province.

38. Banking, that is to say, the conduct of banking business by corporations other than corporations owned or controlled by a Federated State and carrying on business only within that State.

39. Extension of the powers and jurisdiction of members of a Police force belonging to any part of British India to any area in another Governor's Province or Chief Commissioner's Province, but not so as to enable the Police of one part to exercise powers and jurisdiction elsewhere without the consent of the Government of the Province or the Chief Commissioner, as the case may be; extension of the powers and jurisdiction of members of a Police force belonging to any unit to railway areas outside that unit.

40. Elections to the Federal Legislature, subject to the provisions of this Act and of any Order in Council made thereunder.

41. The salaries of the Federal Ministers, of the President and Vice-President of the Council of State and of the Speaker and Deputy Speaker of the Federal Assembly; the salaries, allowances and privileges of the members of the Federal Legislature; and, to such extent as is expressly authorised by Part II of this Act, the punishment of persons who refuse to give evidence or produce documents before Committees of the Legislature.

42. Offences against laws with respect to any of the matters in this list.

43. Inquiries and statistics for the purposes of any of the matters in this list.

44. Duties of customs, including export duties.

45. Duties of excise on tobacco and other goods manufactured or produced in India except—

(a) alcoholic liquors for human consumption;

(b) opium, Indian hemp and other narcotic drugs and narcotics; non-narcotic drugs;

(c) medicinal and toilet preparations containing alcohol, or any substance included in sub-paragraph (b) of this entry.

46. Corporation tax.

47. Salt.

48. State lotteries.

49. Naturalization.

50. Migration within India from or into a Governor's Province or a Chief Commissioner's Province.

51. Establishment of standards of weight.

52. Ranchi European Mental Hospital.

53. Jurisdiction and powers of all courts, except the Federal Court, with respect to any of the matters in this list and, to such extent as is expressly authorised by Part IX of this Act, the enlargement of the appellate jurisdiction of the Federal Court, and the conferring thereon of supplemental powers.

54. Taxes on income other than agricultural income.

55. Taxes on the capital value of the assets, exclusive of agricultural land, of individuals and companies; taxes on the capital of companies.

56. Duties in respect of succession to property other than agricultural land.

57. The rates of stamp duty in respect of bills of exchange, cheques, promissory notes, bills of lading, letters of credit, policies of insurance, proxies and receipts.

58. Terminal taxes on goods or passengers carried by railway or air; taxes on railway fares and freights.

59. Fees in respect of any of the matters in this list, but not including fees taken in any Court.

LIST II

PROVINCIAL LEGISLATIVE LIST

1. Public order (but not including the use of His Majesty's naval, military or air forces in aid of the civil power); the administration of justice; constitution and organisation of all courts, except the Federal Court, and fees taken therein; preventive detention for reasons connected with the maintenance of public order; persons subjected to such detention.

2. Jurisdiction and powers of all courts except the Federal Court, with respect to any of the matters in this list; procedure in Rent and Revenue Courts.

3. Police, including railway and village Police.

4. Prisons, reformatories, Borstal institutions and other institutions of a like nature, and persons detained therein; arrangements with other units for the use of prisons and other institutions.

5. Public debt of the Province.

6. Provincial Public Services and Provincial Public Service Commissions.

7. Provincial pensions, that is to say, pensions payable by the Province or out of Provincial revenues.

8. Works, land and buildings vested in or in the possession of His Majesty for the purposes of the Province.

9. Compulsory acquisition of land.

10. Libraries, museums and other similar institutions controlled or financed by the Province.

11. Elections to the Provincial Legislature, subject to the provisions of this Act and of any Order in Council made thereunder.

12. The salaries of the Provincial Ministers, of the Speaker and Deputy Speaker of the Legislative Assembly, and, if there is a Legislative Council, of the President and Deputy President thereof; the salaries, allowances and privileges of the members of the Provincial Legislature; and, to such extent as is expressly authorised by Part III of this Act, the punishment of persons who refuse to give evidence or produce documents before Committees of the Provincial Legislature.

13. Local government, that is to say, the constitution and powers of municipal corporations, improvement trusts, district boards, mining settlement authorities and other local authorities for the purpose of local self-government or village administration.

14. Public health and sanitation; hospitals and dispensaries; registration of births and deaths.

15. Pilgrimages, other than pilgrimages to places beyond India.

16. Burials and burial grounds.

17. Education.

18. Communications, that is to say, roads, bridges, ferries, and other means of communication not specified in List I; minor railways, subject to the provisions of List I with respect to such railways; municipal tramways; ropeways; inland waterways and traffic thereon subject to the provisions of List III with regard to such waterways; ports, subject to the provisions in List I with regard to major ports; vehicles other than mechanically propelled vehicles.

19. Water, that is to say, water supplies, irrigation and canals, drainage and embankments, water storage and water power.

20. Agriculture, including agricultural education and research, protection against pests and prevention of plant diseases; improvement of stock and

prevention of animal diseases; veterinary training and practice; pounds and the prevention of cattle trespass.

21. Land, that is to say, rights in or over land, land tenures, including the relation of landlord and tenant, and the collection of rents; transfer, alienation and devolution of agricultural land; land improvement and agricultural loans; colonization; Courts of Wards; encumbered and attached estates; treasure trove.

22. Forests.

23. Regulation of mines and oilfields and mineral development subject to the provisions of List I with respect to regulation and development under Federal control.

24. Fisheries.

25. Protection of wild birds and wild animals.

26. Gas and gas-works.

27. Trade and commerce within the Province; markets and fairs; money-lending and money-lenders.

28. Inns and innkeepers.

29. Production, supply and distribution of goods; development of industries, subject to the provisions in List I with respect to the development of certain industries under Federal control.

30. Adulteration of foodstuffs and other goods; weights and measures.

31. Intoxicating liquors and narcotic drugs, that is to say, the production, manufacture, possession, transport, purchase and sale of intoxicating liquors, opium and other narcotic drugs, but subject, as respects opium, to the provisions of List I and, as respects poisons and dangerous drugs, to the provisions of List III.

32. Relief of the poor; unemployment.

33. The incorporation, regulation, and winding-up of corporations other than corporations specified in List I; unincorporated trading; literary, scientific, religious and other societies and associations; co-operative societies.

34. Charities and charitable institutions; charitable and religious endowments.

35. Theatres, dramatic performances and cinemas, but not including the sanction of cinematograph films for exhibition.

36. Betting and gambling.

37. Offences against laws with respect of any of the matters in this list.

38. Inquiries and statistics for the purpose of any of the matters in this list.

39. Land revenue, including the assessment and collection of revenue, the maintenance of land records, survey for revenue purposes and records of rights, and alienation of revenue.

40. Duties of excise on the following goods manufactured or produced in the Province and countervailing duties at the same or lower rates on similar goods manufactured or produced elsewhere in India—

(a) alcoholic liquors for human consumption;

(b) opium, Indian hemp and other narcotic drugs and narcotics; non-narcotic drugs;

(c) medicinal and toilet preparations containing alcohol or any substance included in sub-paragraph (b) of this entry.

41. Taxes on agricultural income.

42. Taxes on lands and buildings, hearths and windows.

43. Duties in respect of succession to agricultural land.

44. Taxes on mineral rights, subject to any limitations imposed by any Act of the Federal Legislature relating to mineral development.

45. Capitation taxes.

46. Taxes on professions, trades, callings and employments.

47. Taxes on animals and boats.

48. Taxes on the sale of goods and on advertisements.

49. Cesses on the entry of goods into a local area for consumption, use or sale therein.

50. Taxes on luxuries, including taxes on entertainments, amusements, betting and gambling.

51. The rates of stamp duty in respect of documents other than those specified in the provisions of List I with regard to rates of stamp duty.

52. Dues on passengers and goods carried on inland waterways.

53. Tolls.

54. Fees in respect of any of the matters in this list, but not including fees taken in any Court.

LIST III

CONCURRENT LEGISLATIVE LIST

Part I

1. Criminal law, including all matters included in the Indian Penal Code at the date of the passing of this Act, but excluding offences against laws with respect to any of the matters specified in List I or List II and excluding the use of His Majesty's naval, military and air forces in aid of the civil power.

2. Criminal Procedure, including all matters included in the Code of Criminal Procedure at the date of the passing of this Act.

3. Removal of prisoners and accused persons from one unit to another unit.

4. Civil Procedure, including the law of Limitation and all matters included in the Code of Civil procedure at the date of the passing of this Act; the recovery in a Governor's Province or a Chief Commissioner's Province of claims in respect of taxes and other public demands, including arrears of land revenue and sums recoverable as such, arising outside that Province.

5. Evidence and oaths; recognition of laws, public acts and records and judicial proceedings.

6. Marriage and divorce; infants and minors; adoption.

7. Wills, intestacy, and succession, save as regards agricultural land.

8. Transfer of property other than agricultural land; registration of deeds and documents.

9. Trusts and Trustees.

10. Contracts, including partnership, agency, contracts of carriage, and other special forms of contract, but not including contracts relating to agricultural land.

11. Arbitration.

12. Bankruptcy and insolvency; administrators-general and official trustees.

13. Stamp duties other than duties or fees collected by means of judicial stamps, but not including rates of stamp duty.

14. Actionable wrongs, save in so far as included in laws with respect to any of the matters specified in List I or List II.

15. Jurisdiction and powers of all courts, except the Federal Court, with respect to any of the matters in this list.

16. Legal, medical and other professions.

17. Newspapers, books and printing presses.

18. Lunacy and mental deficiency, including places for the reception or treatment of lunatics and mental deficient.

19. Poisons and dangerous drugs.

20. Mechanically propelled vehicles.

21. Boilers.

22. Prevention of cruelty to animals.

23. European vagrancy; criminal tribes.

24. Inquiries and statistics for the purpose of any of the matters in this Part of this List.

25. Fees in respect of any of the matters in this Part of this List, but not including fees taken in any Court.

Part II

26. Factories.

27. Welfare of labour; conditions of labour; provident funds; employers' liability and workmen's compensation; health insurance, including invalidity pensions; old age pensions.

28. Unemployment insurance.

29. Trade unions; industrial and labour disputes.

30. The prevention of the extension from one unit to another of infectious or contagious diseases or pests affecting men, animals or plants.

31. Electricity.

32. Shipping and navigation on inland waterways as regards mechanically propelled vessels, and the rule of the road on such waterways; carriage of passengers and goods on inland waterways.

33. The sanctioning of cinematograph films for exhibition.

34. Persons subjected to preventive detention under Federal authority.

35. Inquiries and statistics for the purpose of any of the matters in this Part of this List.

36. Fees in respect of any of the matters in this Part of this List, but not including fees taken in any Court.

2. INSTRUMENT OF INSTRUCTIONS TO THE GOVERNOR-GENERAL, 1937.

(Under Act of 1935)

Harmony
with Indian
Legislature

Conversion
into Federa-
tion

Authority of
Centre and
Provinces to
prevail in
their respect-
ive spheres

VII. It is Our will and pleasure that Our Governor-General shall use all endeavour consistent with the fulfilment of his responsibilities to Us and to Our Parliament for the welfare of Our Indian subjects, that the administration of the matters committed to the charge of Our Governor-General in Council may be conducted in harmony with the wishes of Our said subjects as expressed by their representatives in the Indian Legislature so far as the same shall appear to him to be just and reasonable; and shall so order the administration of his Government as to further the policy of the Act for its conversion into a Federation of all India.

VIII. Whereas it is expedient for the common good of British India that the authority of Our Governor-General in Council and of the Indian Legislature in those matters which are by law assigned to them should prevail:

And whereas at the same time it is the purpose of the Act that the Governments and Legislatures of the Provinces should be free in their own sphere to pursue their own policy:

And whereas in the interest of the harmonious co-operation of the several members of the body politic, the Act has empowered Our Governor-General to exercise, at his discretion, certain powers affecting the relations between his Government and the Provinces:

It is Our will and pleasure that Our Governor-General in the exercise of these powers should give unbiased consideration as well to the views of the Governments of the Provinces as to those of his own Government whenever those views are in conflict, and in particular, when it falls to him to exercise his power to issue orders to the Governor of a Province for the purpose of securing that the executive authority of the Governor-General in Council is not impeded or prejudiced, or his power to determine whether Provincial law or Central law shall regulate a matter in the sphere in which both Legislatures have power to make laws.

Governor-General's duty in case of conflict between Centre and Provinces

IX. It is Our desire that Our Governor-General shall by all reasonable means encourage consultation with a view to common action between his Government and the Provinces and between the Provinces themselves. It is Our further will and pleasure that Our Governor-General shall endeavour to secure the co-operation of the Provincial Governments in the maintenance of such Central agencies and institutions for research as may serve to assist the conduct by Provincial Governments of their own affairs.

"Common action" between Centre and Provinces and between Provinces

* * * *

XV. And generally Our Governor-General shall do all that in him lies to maintain standards of good administration; to promote all measures making for moral, social and economic welfare and tending to

fit all classes of the population to take their due share in public life; and to secure amongst all classes and creeds co-operation, good will and mutual respect for religious beliefs and sentiments . . .

XVI. And finally it is Our will and pleasure that Our Governor-General should so exercise the trust reposed in him that the partnership between India and the United Kingdom within Our Empire may be furthered, to the end that India may attain its due place among Our Dominions.

3. INSTRUMENT OF INSTRUCTIONS TO THE PROVINCIAL GOVERNOR, 1937.

(Under Act of 1935)

*B.—In regard to the Executive Authority
of the province.*

How
Ministers
are to be
appointed

VII. In making appointments to his Council of Ministers Our Governor shall use his best endeavours to select his Ministers in the following manner, that is to say, in consultation with the person who in his judgement is likely to command a stable majority so far as practicable members of important minority communities) who will best be in a position collectively to command the confidence of the Legislature. But, in so acting, he shall bear constantly in mind the need for fostering a sense of joint responsibility among his Ministers.

Relations
between
Governor
and
Ministers

VIII. In all matters within the scope of the executive authority of the Province, save in relation to functions which he is required by the said Act to exercise in his discretion, Our Governor shall in the exercise of the powers conferred upon him be guided by the advice of his Ministers, unless in his opinion so to be guided would be inconsistent with the fulfilment of any of the special responsibilities which are by the said Act committed to him, or with the proper discharge of any of the functions which he is otherwise by the said Act required to exercise on his individual judgement; in any of which cases Our Governor shall, notwithstanding his Ministers' advice, act

in exercise of the powers by the said Act conferred upon him in such manner as to his individual judgment seems requisite for the due discharge of the responsibilities and functions aforesaid. But he shall be studious so to exercise his powers as not to enable his Ministers to rely upon his special responsibilities in order to relieve themselves of responsibilities which are properly their own.

IX. Our Governor shall interpret his special responsibility for the safeguarding of the legitimate interests of the minorities as requiring him to secure, in general, that those racial or religious communities for the members of which special representation is accorded in the Legislature, and those classes of the people committed to his charge who, whether on account of the smallness of their number or their lack of educational or material advantages or from any other cause, cannot as yet fully rely for their welfare upon joint political action in the Legislature, shall not suffer, or have reasonable cause to fear, neglect or oppression. But he shall not regard as entitled to his protection any body of persons by reason only that they share a view on a particular question which has not found favour with the majority.

Interpretation of 'Special Responsibility'

Further, Our Governor shall interpret the said special responsibility as requiring him to secure a due proportion of appointments in Our Services to the several communities, and so far as there may be in his Province at the date of issue of these Our Instructions an accepted policy in this regard, he shall be guided thereby, unless he is fully satisfied that modification of that policy is essential in the interests of the communities affected or of the welfare of the public.

Share of different communities in Public Services

X. In the discharge of his special responsibility for the securing to members of the public services of any rights provided for them by or under the said Act and the safeguarding of their legitimate interests Our Governor shall be careful to safeguard the members of Our Services not only in any rights provided

Protection of Public Services

for them by or under the said Act or any other law for the time being in force, but also against any action which, in his judgement, would be inequitable.

Chapter
III of Part
V of Act
of 1935

XI. The special responsibility of Our Governor for securing in the sphere of executive action any of the purposes which the provisions of Chapter III of Part V of the said Act are designed to secure in relation to legislation shall be construed by him as requiring him to differ from his Ministers if in his individual judgement their advice would have effects of the kind which it is the purpose of the said Chapter to prevent, even though the advice so tendered to him is not in conflict with any specific provision of the said Act.

Protection
of rights of
Indian
States

XII. Our Governor shall construe his special responsibility for the protection of the rights of any Indian State as requiring him to see that no action shall be taken by his Ministers, and no Bill of the Provincial Legislature shall become law, which would imperil the economic life of any State, or affect prejudicially any right of any State heretofore or hereafter recognised, whether derived from treaty, grant, usage, sufferance or otherwise, not being a right appertaining to a matter with respect to which, in virtue of the Ruler's Instrument of Accession, the Federal Legislature may make laws for his State and his subjects: and he shall refer to Our Governor-General any questions which may arise as to the existence of any such right¹.

Finance

XIII. In the framing of rules for the regulation of the business of the Provincial Government Our Governor shall ensure that, amongst other provisions for the effective discharge of that business, due provision is made that the Minister in charge of the Finance Department shall be consulted upon any proposal by any other Minister which affects the

¹ The procedure for the determination of the right in case of a dispute rested with the Crown Representative for the conduct of relation with the Indian States.

finances of the Province: and further that no reappropriation within a Grant shall be made by any Department otherwise than after consultation with the Finance Minister; and that in any case in which the Finance Minister does not concur in any such proposal the matter shall be brought for decision before the Council of Ministers.

He shall further in those rules make due provision to secure that prompt attention is paid to any representation received by his Government from any Minority.

XIV. Having regard to the powers conferred by the said Act upon Our Secretary of State to appoint persons to Our service if, in his opinion, circumstances arise which render it necessary for him so to do in order to secure efficiency in irrigation, Our Governor shall make it his care to see that he is kept constantly supplied with information as to the conduct of irrigation in his Province in order that he may, if need be, place this information at the disposal of Our Governor-General. Irrigation

* * * *

C.—Matters affecting the Legislature

XVII. . . . Our Governor shall not assent in Our name to, but shall reserve for the consideration of Our Governor-General, any Bill of any of the classes herein specified, that is to say:

(a) any Bill the provisions of which would repeal or be repugnant to the provisions of any Act of Parliament extending to British India;

(b) any Bill which in his opinion would, if it became law, so derogate from the powers of the High Court as to endanger the position which that Court is by the Act designed to fill;

Reservation
of Bills by
Governor

- (c) any Bill regarding which he feels doubt whether it does, or does not, offend against the purposes of Chapter III of Part V¹ or section 299 of the Act²;
- (d) any Bill which would alter the character of the Permanent Settlement.

* * * *

General
aims of
Governor

XIX. And generally our Governor shall do all that in him lies to maintain standards of good administration; to encourage religious toleration, co-operation and goodwill among all classes and creeds; and to promote all measures making for moral, social and economic welfare, and tending to fit all classes of the population to take their share in the public life and government of the Province.

4. INDIAN NATIONAL CONGRESS AND REJECTION OF ACT OF 1935, 1936.

I. Resolution of Congress, Lucknow Session, April, 1936.

New
constitution
rejected "in
entirety"

Whereas the Government of India Act, 1935, which is based on the White Paper and Joint Parliamentary Report and which is in many respects even worse than the proposals contained in them, in no way represents the will of the nation, is designed to facilitate and perpetuate the domination and exploitation of the people of India and is imposed on the country to the accompaniment of widespread repression and the suppression of civil liberties, the Congress reiterates its rejection of the new constitution in its entirety.

The Congress, as representing the will of the Indian people for national freedom and a democratic

¹ Provisions with regard to discrimination against British subjects domiciled in the United Kingdom, etc.

² Compulsory acquisition of land.

State, declares that no constitution imposed by outside authority and no constitution which curtails the sovereignty of the people of India and does not recognise their right to shape and control fully their political and economic future can be accepted. In the opinion of the Congress such a constitution must be based on the independence of India as a nation and it can only be framed by a Constituent Assembly elected on adult franchise or a franchise which approximates to it as nearly as possible. The Congress, therefore, reiterates and stresses the demand for a Constituent Assembly in the name of the Indian people and calls upon its representatives and members in Legislatures and outside to work for the fulfilment of this demand.

Demand for
Constituent
Assembly

In view of the fact that elections for the Provincial Legislatures under the new Act may . . . take place before the next session of the Congress, this Congress resolves that in such an event candidates should be put forward on its behalf to contest such seats in accordance with the mandate of the Congress and in pursuance of its declared policy¹ . . .

Congress to
participate
in elections
to Provincial
Legislatures

* * *

The question of acceptance or non-acceptance of office by Congress members elected to the Legislatures under the Constitution having been agitated in the country, the Congress, in view of the uncertainties of the situation as it may develop, considers it inadvisable to commit itself to any decision at this stage on the question and leaves it to be decided at the proper time by the All-India Congress Committee after consulting the Provincial Congress Committees.

No com-
mitment
on office
acceptance

¹ "The immediate objective of the Congress is to fight the new Constitution, to resist the introduction and working of the Federal part of the Act, and to lay stress on the nation's demand for a Constituent Assembly".—Resolution of Working Committee, March, 1937.

II. Presidential Address of Jawaharlal Nehru, Congress, December, 1936.

"New
chapter of
bondage"

The Government of India Act of 1935, the new Constitution, stares at us offensively, this new chapter of bondage which has been imposed upon us despite our utter rejection of it, and we are preparing to fight elections under it . . . We go to the Legislatures not to co-operate with the apparatus of British imperialism, but to combat the Act and seek to end it . . . We are not going to the Legislatures to pursue the path of constitutionalism or barren reformism.

III. "National Demand" Resolution¹, March, 1937.

People of
India to
frame
their own
Constitution

The Convention calls upon all Congress Parliamentary parties to take the earliest opportunity to put forward in the name of the nation, a demand in their respective Legislatures that the Government of India Act, 1935, be withdrawn so that the people of India may frame their own Constitution.

5. MUSLIM LEAGUE AND ACT OF 1935², 1936.

Constitution
forced
on
India

Resolved that the All-India Muslim League enters its emphatic protest against forcing the Constitution as embodied in the Government of India Act of 1935, upon the people of India, against their will and in spite of their repeated disapproval and dissent, expressed by various parties and bodies in the country.

Provincial
Scheme
to be
utilized

The League considers that having regard to the conditions prevailing at present in the country the Provincial Scheme of the Constitution be utilized for what it is worth in spite of the most objectionable

¹ Passed by All-India National Convention of Congress Legislators, March, 1937.

² Resolution, April 11-12, 1936.

features contained therein, which render the real control and responsibility of the Ministry and the Legislature over the entire field of the Government and the administration nugatory.

The League is clearly of the opinion that the All-India Federal Scheme of the Central Government embodied in the . . . Act of 1935 is fundamentally bad. It is most reactionary, retrograde, injurious and fatal to the vital interests of British India *vis-a-vis* the Indian States, and it is calculated to thwart and delay indefinitely the realization of India's most cherished goal of complete responsible government and is totally unacceptable.

Federal
Scheme
condemned

The League considers that the British Parliament should still take the earliest opportunity to review the whole situation afresh regarding the Central Scheme before it is inaugurated; or else the League feels convinced that it would not bring peace and contentment to the people, but on the contrary it will lead to disaster if forced upon the people and persisted in as it is entirely unworkable in the interest of India and her people.

Federal
Scheme
"entirely
unworkable"

6. CONGRESS AND OFFICE ACCEPTANCE, 1937.

I. Resolution of All-India Congress Committee, March 18, 1937.

. . . The declared Congress policy was to combat the new Act and end it. The electorate has, in overwhelming measure, set its seal on this policy and programme and the new Act therefore stands condemned and utterly rejected by the people . . . This Committee therefore demands, on behalf of the people of India, that the new constitution be withdrawn.

New Act
"stands
condemned
and utterly
rejected"
by the
electorate.

* * *

And on the pending question of office acceptance, . . . the Committee authorizes and permits the acceptance of office in Provinces where the Congress

Conditional
approval
of office
acceptance

commands a majority in the Legislature, provided the Ministerships shall not be accepted unless the leader of the Congress Party in the Legislature is satisfied and is able to state publicly that the Governor will not use his special powers of interference or set aside the advice of Ministers in regard to constitutional activities.

II. Resolution of Working Committee, April 28, 1937.

Governors'
invitation
to take
office
refused

The Working Committee approves of and endorses the action that the leaders of the Congress Parliamentary parties in the Provinces took¹, in pursuance of the resolution of the All-India Congress Committee dated March 18, 1937, on being invited by the Governors in their respective Provinces to help them in the formation of Ministries.

Assurances
can be
given
without
amendment
of Act.

In view of the fact that it is contended by British Ministers² that it is not competent for the Governors, without amendment of the Act, to give the assurance required by the Congress for enabling the Congress leaders to form Ministries, the Committee wishes to make it clear that the resolution of the All-India Congress Committee did not contemplate any amendment of the Act for the purpose of the required assurances. The Working Committee moreover is advised by eminent jurists that such assurances can be given strictly within the Constitution.

III. Resolution of Working Committee, July 7, 1937.

. . . Since the meeting of the Working Committee on 28 April last, Lord Zetland, Lord Stanley and

¹ The Governors' invitation to form Ministries was refused.

² Lord Zetland (Secretary of State for India) and Mr. R. A. Butler.

the Viceroy¹ have made declarations on this issue on behalf of the British Government. The Working Committee has carefully considered these declarations and is of opinion that though they exhibit a desire to make an approach to the Congress demand they fall short of the assurances demanded in terms of the All-India Congress Committee resolution as interpreted by the Working Committee resolution of 28 April . . . The Committee feels, however, that the situation created as the result of the circumstances and events that have since occurred, warrants the belief that it will not be easy for the Governors to use their special powers . . . The Committee has therefore come to the conclusion and resolves that Congressmen be permitted to accept office where they may be invited thereto. But it desires to make it clear that office is to be accepted and utilized for the purpose of working in accordance with the lines laid down in the Congress manifesto and to further in every possible way the Congress policy of combating the new Act on the one hand and of prosecuting the constructive programme on the other².

Assurances
unsatisfactory

"It will not be easy for the Governors to use their special powers".

Office to be accepted for combating new Act

7. LORD LINLITHGOW ON RELATIONS OF GOVERNORS WITH MINISTERS¹, 1937.

[The full results of the Provincial elections were known in February, 1937. In Madras the Congress secured about 74 per cent. of the total seats in the Legislative Assembly and 56.5 per cent. of the total seats in the Legislative Council. In Bombay the Congress secured 49 per cent. of the total seats in the Assembly and 50 per cent. of the total seats in the Council. In C.P. the Congress secured 62.5 per cent of the total seats in the Assembly. In U.P. the Congress secured 59 per cent. of the total seats in the Assembly and 8 per cent. of the total seats in the Council. In Bihar the Congress secured 65 per cent. of the total seats in the Assembly but failed to secure

Congress victory in elections (1937)

¹ Lord Linlithgow's Statement: Document No. 7.

² The Congress "permitted the formation in Provinces of Congress Ministries with a view to strengthen the nation in its struggle for independence".—Resolution of Congress, Haripura Session, 1938.

³ Statement, June 22, 1937.

any seat in the Council. In Orissa the Congress secured 60 per cent. of the total seats in the Assembly. In Assam the Congress secured about 30 per cent. of the total seats in the Assembly but failed to secure any seat in the Council. In the N.W.F.P. the Congress secured 38 per cent. of the total seats in the Assembly. In Bengal, Sindh and the Punjab the Congress secured about 22 per cent., 12 per cent. and 10.5 per cent. respectively of the total seats in the Assembly.

A decision on the question of acceptance of office could no longer be delayed. On March 18, 1937, the All-India Congress Committee passed a resolution reiterating the policy of combating and ending the Act, but authorising office acceptance under certain conditions.¹ In a statement issued on March 30, 1937, Mahatma Gandhi observed, "My desire was not to lay down any impossible condition. . . . I felt that this object could not be secured unless there was a gentlemanly understanding between Governors and their Congress Ministers that they would not exercise their special powers of interference so long as Ministers acted within the Constitution. . . . Have I not heard Sir Samuel Hoare and other Ministers saying in so many words that ordinarily Governors would not use their admittedly large powers of interference? I claim that the Congress formula asked for nothing more. It has been claimed on behalf of the British Government that the Act gives autonomy to the Provinces. If that is so, it is not Governors but Ministers who are during their period of office responsible for the wise administration of their Provinces."

Mahatma
Gandhi on
office
acceptance

Professor Coupland's interpretation of the Congress demand is as follows: "The Governors were to promise not to do what in certain circumstances they were required to do by the Act and Instructions which they had sworn to obey."² The Governors refused to give such a promise, and the Congress leaders declined to take office. Instead of governing the Congress-majority Provinces under Section 93 of the Act of 1935, the Governors appointed "Interim" Ministers not supported by the Legislatures.

Coupland's
interpre-
tation of
Congress
demand

The controversy about the legality and desirability of the Congress demand went on for about four months, and was concluded by Lord Linlithgow's statement of June 22. Professor Coupland says, "In fact no constitutional ground had been surrendered. Lord Linlithgow had not accepted Lord Lothian's doctrine that a conflict between a Governor and his Ministers should be resolved by an appeal to the electorate, nor did his view that only a conflict on a major issue would justify an open breach imply that on other issues the 'safe-

Coupland's
interpre-
tation of
Viceroy's
statement

¹ Document No. 6 (1).

² *The Constitutional Problem in India*, Part II, p. 17.

guards' would not operate at all. On minor questions, as in others, it was not to be supposed....that Ministers would try, as a matter of deliberate policy, to do what the 'safeguards' had been designed to prevent. Differences of opinion on such questions would probably, therefore, be due to misunderstandings and ought to be overcome by frank discussion."¹ However, the Viceroy's statement was accepted by the Congress as a working compromise and on July 7, 1937, the Working Committee permitted Congressmen to accept office with the purpose of "combating the new Act on the one hand and prosecuting a constructive programme on the other."²

I have refrained hitherto from making any public statement of any sort on the constitutional issues which have been raised by the refusal of the party which commands a majority of the votes in the Legislatures to accept office in certain Provinces. My decision to do so was deliberate. The Governor-General, it is true, exercises under the Act a general control of the action taken by Provincial Governors in their discretion or in their individual judgement, and he is himself correspondingly subject to the general control of the Secretary of State. But given the scheme, the intention, and the construction of the new constitution, matters such as those which have of late been the subject of discussion in all Provinces in which the majority party in the Legislatures has declined to accept office are eminently, in the first place, matters for discussion between the leaders of that party in the Province concerned and the Governor of that Province.

A point has now, however, been reached at which it will, I think, be of advantage that, for the benefit of the man in the street and the ordinary elector, I should myself take up the threads of this discussion in the light of the statements which have been made in Parliament by the Secretary of State, and in individual Provinces by the Governors, and that I should state comprehensively, in the most formal and public manner open to me, my attitude, which is equally

Refusal of Congress to accept office

Relations between Secretary of State, Governor-General and Governors

Discussions between Governors and leaders of Congress Parliamentary parties

Official statement required on question of office acceptance raised by Congress

¹ *The Constitutional Problem in India*, Part II, pp. 20-21.

² Document No. 6 (III).

the attitude of the Secretary of State and the Governor of every Province in India, on the constitutional issues which have been brought to the fore in connection with this question of office acceptance.

* * *

The interval which has passed has been of value as giving an opportunity to His Majesty's Government, to Parliament, and to individual Governors, to clarify the position beyond any shadow of doubt. It has been of value, in my judgement, also in terms of the experience of the practical working of the new constitution afforded since the 1st of April in every Province in India, whether the Ministries in power in a Province commanded a majority in the Legislatures or were themselves supported only by a minority in those bodies. Three months ago a great political party, which commanded in six Provinces a majority in the Legislature, felt that even with the support of the majority in the Legislature, it could not wisely accept office under the provisions of the Act unless it received certain specific assurances from Governors. Three months' experience of the operation of the constitution, short as I agree that period is, has conclusively shown from the practical point of view that, any legal difficulties in regard to the grant of such assurances apart¹, those assurances are not essential to the smooth and harmonious working of the constitution. In every Province Ministers have been able to test by practical experience that the co-operation and the assistance of the Services are at their disposal, and that they can in their dealings in day-by-day administration of the Province, and in their relations with the Governors of their Provinces, rely on those Governors to place at their disposal in the fullest measure and with no

Congress
demand for
assurances

Lesson
taught by
'Interim'
Ministries

'Interim'
Ministries
received
full co-
operation
from
Governors
and
Services.

¹ In a communique issued by the U. P. Government it was stated that, in view of the obligations imposed upon the Governor by the Act of 1935 and the Instrument of Instructions, it was legally not in his power to meet the Congress demand.

shade or suggestion of prejudice or personal feeling that help, sympathy, co-operation and experience which the Governors of individual Provinces have promised. Those three months have shown equally, and beyond question, that the apprehensions which have been entertained—and I readily accept the sincerity of those apprehensions even if I see no foundation of fact for them—that Governors would seek occasions for interfering with the policy of their Ministers, or for the gratuitous and uncalled for exercise of the Special Responsibilities imposed upon them by the Act to impede or challenge Ministers in the day-by-day administration of the Province, have no shadow of justification.

Governors will not make 'gratuitous and uncalled for exercise of the Special Responsibilities.'

I have been intimately associated with the framing of the present constitution. I am familiar with the close concern shown by Parliament, whether in the Joint Select Committee or on the floor of both Houses, to devise a scheme which would confer real and substantial powers on popularly elected Ministers, and which would enable those Ministers to feel that they could with confidence frame and implement, with the co-operation of Governors and of the Services, a programme of legislation on broad lines for the benefit of the Province the government of which was in their hands. The Act, and the Instrument of Instructions which must be read with the Act, have been approved by Parliament. Taken together they represent the intention of Parliament and the instructions given by Parliament to Governors. Those documents make it clear beyond any possibility of question that, under Provincial Autonomy, in all matters falling within the Ministerial field, including the position of the Minorities, the Services, etc., the Governor will ordinarily be guided in the exercise of his powers by the advice of his Ministers, and that those Ministers will be responsible not to Parliament but to the Provincial Legislature. The only qualifications of this rule are in respect of certain specific and clearly defined matters. The most important

Intention of Parliament to "confer real and substantial powers on popularly elected Ministers."

Official interpretation of Act of 1935 and Instrument of Instructions

Relations
between
Governor
and
Ministers

Special
Respon-
sibilities

Governor
cannot
intervene
at random
in adminis-
tration.

Experience
of 'Interim'
Ministries
shows that
friction will
not arise
out of
'Special
Respon-
sibilities'.

of these are those known as the Special Responsibilities, and of those Special Responsibilities again the most important are the prevention of any grave menace to the peace or tranquillity of the Province, or any part of the Province, the safeguarding of legitimate interests of Minorities, and the securing to the Services and their dependants of any rights provided or preserved for them under the Act and the safeguarding of their legitimate interests. Of those Special Responsibilities none was lightly placed by Parliament, or inconsiderately, on the shoulder of the Governor. Every one of them represents the response of Parliament to the demands of substantial and legitimate interests. There is no vestige of foundation for the assertion which I have seen advanced that the Governor is entitled under the Act at his pleasure to intervene at random in the administration of the Province. Those Special Responsibilities are, as I have said, restricted in scope to the narrowest limits possible. Even so, limited as they are, a Governor will at all times be concerned to carry his Ministers with him; while in other respects in the field of their Ministerial responsibilities it is mandatory on a Governor to be guided by the advice of his Ministers even though for whatever reason he may not himself be wholly satisfied that that advice is in the circumstances necessarily and decisively the right advice. The extent to which in practice, given goodwill on both sides and a desire to operate the new constitution for the benefit of the Province as a whole, difficulty may be anticipated from the existence of these Special Responsibilities cannot be better exemplified than by the history of every Province in India during the past three months. I think I am right in saying that no occasion has arisen on which there has been any conflict or difficulty in this area.

I have made clear, I hope, the object at which Parliament is aiming in the Act, the fact that it transferred the executive authority in the Province

in practice to Ministers, and that the extent to which a Governor, acting in his discretion or in his individual judgement, has vested in him certain responsibilities, is restricted to the bare minimum judged to be essential. I have indicated further that in the Ministerial field there can be no interference by a Governor with Ministers, save in respect of matters with regard to which he is empowered to exercise an individual judgement.

Governor's special power restricted to 'the bare minimum'

I now turn to the question of what is to happen if unfortunately a situation arises in which the Governor and his Ministers do not see eye to eye on a matter where he is required to exercise his individual judgement. Such an issue may arise over a matter of comparatively minor importance, or over a matter which is of major importance, but on which no responsible Ministry, however little it might itself agree with the decision taken by the Governor, would for a moment—or for more than a moment—contemplate resignation. I have already stated that Ministers have the duty of advising the Governor over the whole range of the executive government within the Ministerial field, including the area of the Special Responsibilities. For advice so given, whether on matters within or without the scope of the Special Responsibilities, Ministers are answerable to the Legislature. In all such matters in which he is not specifically required to exercise his individual judgement, it is mandatory upon the Governor to accept the advice of his Ministers. Within the limited area of his Special Responsibilities, a Governor is directly answerable to Parliament, whether he accepts or does not accept the advice of his Ministers. But if the Governor is unable to accept the advice of his Ministers, then the responsibility for his decision is his and his alone. In that event, Ministers bear no responsibility for the decision and are entitled—if they so desire—publicly to state that they take no responsibility for that particular decision, or even that they have advised the Governor in an opposite sense.

Cases where Governor and Ministers differ

Ministers may publicly dissociate themselves from Governor's policy.

Before
rejecting
Minister's
advice
Governor
will try to
secure his
concurrence.

But every Governor will be concerned to have the support of his Ministry, or to know that he is not lightly at variance with his Ministry when he acts without their support, or against their advice, in the discharge of a Special Responsibility. He will, as I see it (and the view I now proceed to express is the view of every Governor in India and of the Secretary of State), in such circumstances in the first place put the Ministry or the Minister fully in possession of his mind. He will explain to him the reasons which, in his judgement, make it essential for him to follow a particular course or to pass a particular order. He will listen with a mind open to conviction to the arguments on the other side which may be advanced to him. If he regards those arguments as valid, he will modify his proposal to such extent as may be appropriate. If he regards them, on the other hand, as invalid, he will do his utmost, before taking a final decision, to convince the Minister, or the Ministry, of the soundness of the reasons for which he is unable to accept his or their view. And if in these circumstances he still remains unable to influence their views in the direction he desires, he will take his decision and pass his order with the greatest personal regret that he should have been unable to secure the support of his Ministry, and before passing it he will have exhausted all methods of convincing his Ministry that that decision was the right one, given the obligation imposed upon him by the Act.

Ultimate
decision to
be made by
Governor

So much for the general basis on which, as I conceive it, a Governor will handle the situation which we have been discussing. But the Special Responsibilities, strictly defined as their ambit is, include in their compass matters and decisions the importance of which inevitably must vary greatly. I ask at once—is the same attitude to be adopted in every case, whether its importance is great or small? Is the Ministry to regard its position as affected in an equal degree by any and every decision of the

Governor contrary to its advice, irrespective of the magnitude or the intrinsic importance of that decision? In a case in which the Governor in the exercise of his Special Responsibilities, and after exhausting the method of approach to his Ministry which I have indicated, finds himself obliged to pass an order with which his Government did not agree, should the Government resign, or shall it carry on its work after indicating publicly, or privately, or publicly and privately, its attitude in the matter which has formed the subject of the order? Or shall the Governor be required to dismiss it?

Ministers should distinguish between important and unimportant cases in deciding their attitude towards Governor in case of his rejection of their advice.

These are all the points of practical importance.

They have attracted great attention lately in all political parties, for a pronouncement on such an issue must be of direct concern to every party in every Province in India. I judge in particular from the statements made by persons of eminence in or in contact with the majority party in six Provinces that on the answer to them largely depends the final removal of any hesitations which may be entertained in that party as to the method in which the new constitution is to be operated and the extent to which Provincial Ministers can rely on fair treatment and a minimum of interference by a Governor in those matters which under the Act fall within their field. The answer to these questions is of importance to every political party in this country to which it falls to work the constitution, and to take advantage of the powers and responsibilities which have been transferred by the Government of India Act to popularly elected Ministers. It will be well, therefore, given the importance of this issue, that I should make plain beyond any question, and speaking with the fullest authority, my own position in regard to it, which is the position of the Secretary of State and of the Governors of the Provinces.

Misgivings of Congress

Let me say in the first place that it is essential in this matter to preserve a just sense of proportion. I welcome for this reason the helpful suggestion

Statement
of Mahatma
Gandhi

recently made by Mr. Gandhi that it is only when the issue between a Governor and his Ministers constitutes a serious disagreement that any question of the severing of their partnership need arise. "Serious disagreement" is a phrase which it is possible to define and to interpret in various ways. But the general sense is clear enough to anyone with any political or administrative experience. The matter involved must be of really major importance. It must, I would myself say, be of such a character that a Ministry would feel that their credit and their position were hopelessly compromised by a particular action taken against their advice by a Governor in the discharge of his responsibilities under the Act despite the fact that Ministers had no direct or indirect responsibility for that action, and that a Governor had taken the utmost pains to satisfy his Ministry that he had no choice in the discharge of his responsibilities but to take the action in question. I readily agree that where, on such an issue arising, and where the Governor and his Ministers have both approached the matter, as I am confident that they would, with open minds and with a full sense of responsibility—the Governor, in so far as his Special Responsibilities are concerned, to Parliament, the Ministry to the Provincial Legislature—no agreement could be reached, then the Ministry must either resign or be dismissed. As between resignation and dismissal, normal constitutional practice leans very heavily indeed to the side of resignation. Resignation is more consistent with the self-respect of a Ministry, and is an effective public indication of the attitude of Ministers towards the action of a Governor. Resignation equally is an act taken spontaneously by a Ministry. Dismissal, more unusual by far in constitutional practice, might seem to carry with it some suggestion of inferiority, a suggestion which we are concerned at any cost to eliminate from the new constitutional arrangements. I ought perhaps to add that the suggestion that the Governor

Question of
Minister's
resignation
will arise
only in cases
of 'serious
disagree-
ment' with
Governor.

When
should
Ministry
resign or be
dismissed?

Distinction
between
resignation
and
dismissal

should in certain circumstances demand the resignation of his Ministers is not the solution provided by the Act and so that it will not be possible for Governors to accept it. Both resignation and dismissal are possible, the former at the option of the Ministers and the latter at the option of the Governors. But the Act does not contemplate that the Governor's option should be used to force the Ministers' option and thus to shift the responsibility from himself.

I have deliberately dealt with the extreme case of a conflict involving resignation or dismissal, for it is the extreme case on which attention has been rivetted. But the extreme case is in my judgement most unlikely in ordinary circumstances to arise, and it would be unwise of us to allow a contingency, by no means probable, given normal working and the friendly and understanding relations which we can without undue optimism anticipate between a Governor and his Ministers, to assume a dominating importance in our eyes. In the ordinary way such differences as may arise between a Governor and his Ministers will admit, with goodwill on both sides, of being resolved in the ordinary course of administration by agreement between the two parties, without any question of issues so major as resignation or dismissal coming to the fore. I have already indicated the method by which I anticipate the Governors will deal with a situation in which such a difference of opinion exists. I feel no doubt whatever myself that, on that basis, deadlocks need not be anticipated, in view of the anxiety of all Governors—to which I can myself testify—not merely not to provoke conflicts with their Ministers, to whatever party their Ministers may belong, but to leave nothing undone to avoid or to resolve such conflicts.

'Extreme case of conflict' between Governor and Ministers not anticipated

Compromise possible in ordinary cases

I have been the more concerned to set out in some detail the position as I see it, in that it is essential that those interests, or communities, or

Those who are entitled to the benefit of 'Special Responsibilities' need not be alarmed.

Congress attitude to Minorities

areas, to which the Act extends the assurance of Special Responsibilities, should not, for a moment, think, or have the least ground for thinking, that any question will arise of sacrificing their interests for political reasons. So far as the individual Governors are concerned, I can reassure them on that point with the utmost confidence and the fullest authority. So far as political parties go, experience in those Provinces which are at present governed by Ministries supported by a majority in the Legislature is decisively encouraging. As regards the remaining Provinces, the statements of responsible leaders of the majority party have emphasized how short-sighted any attack on those interests would be from the point of view of that party itself and how improbable it is. What I am concerned to make clear is that, without any threat to those interests, or any sacrifice of them, a Governor and his Ministers can, in my judgement, hope, within the provisions of the Act, to operate the constitution in a normal manner which the Act envisages, and to avoid, save in circumstances which I find it not easy to contemplate, fundamental differences of opinion such as to endanger the relation between the Governor and his Ministry in that very limited area in which certain special obligations and responsibilities are imposed upon a Governor.

Let me review what I have said. The position is as follows:—

Executive authority to be normally exercised by Governor on the advice of Ministers

The executive authority of a Province runs in the name of the Governor: but in the Ministerial field the Governor, subject to the qualifications already mentioned, is bound to exercise that executive authority on the advice of his Ministers. There are certain strictly limited and clearly defined areas in which, while here as elsewhere primarily responsibility rests with Ministers, the Governor remains ultimately responsible to Parliament. Over the whole of the remainder of the field Ministers are solely respon-

sible, and they are answerable only to the Provincial Legislature? In the discharge of the Governor's Special Responsibilities it is open to the Governor, and it is indeed incumbent upon him, to act otherwise than on the advice of his Ministers if he considers that the action they propose will prejudice Minorities or areas or other interests affected. The decision in such cases will rest with the Governor; and he will be responsible to Parliament for taking it. But the scope of such potential interference is strictly defined—and there is no foundation for any suggestion that a Governor is free, or is entitled, or would have the power, to interfere with the day-to-day administration of a Province outside the limited range of the responsibilities specially confined to him. Before taking a decision against the advice of his Ministers even within that limited range a Governor will spare no pains to make clear to his Ministers the reasons which have weighed with him in thinking both that the decision is one which it is incumbent on him to take, and that it is the right one. He will put them in possession of his mind. He will listen to the arguments they address to him. He will reach his decision with full understanding of those arguments and with a mind open to conviction. In such circumstances, given the good will which we can I trust postulate on both sides, and for which I can on behalf of His Majesty's Government answer so far as Governors are concerned, conflicts need not in a normal situation be anticipated. On the matter of degree a convention which would require the automatic dismissal or resignation of a Ministry whenever there is any difference of opinion, however unimportant, would show a lack of proportion, and I need not now emphasize the objections to any such convention. For it goes without saying that cases of quite minor importance may arise within the area under discussion; and it goes without saying equally that government, and the position of Ministers, would be impossible, if on each such occasion a

In certain cases ultimate decision will rest on Governor.

Governor is not free to interfere in day-to-day administration.

Governor will be very cautious about rejecting Ministers' advice.

Differences on cases of minor importance should not lead to resignation or dismissal of Ministers

Governor were required by a binding convention to dismiss his Ministers, or the Ministers felt it incumbent on them to resign. The interruption to administration and the loss of credit to Ministers would be intolerable. All the more so since Ministers would feel compelled to resign on account of a decision for which they were not in any way responsible and on which they would be at liberty to indicate publicly that they differed from the Governor who had, in the discharge of his own responsibilities, chosen to take a particular course. It is not by rigid conventions of this nature, but by give and take, by the elasticity which is the governing factor of any successful democratic constitution, that constitutional advance is shown by the experience of history to proceed.

Need for
give and
take

When can
Ministers
resign ?

When
should
Governor
dismiss
Ministers ?

Constitu-
tional
provisions
for contin-
gencies
should not
be taken as
normal
procedure.

Where on the other hand a really major issue is involved and Ministers, even though they are not responsible for the final decision taken by a Governor, and can without any constitutional impropriety make that clear, feel that such action raised issues of such a character, and affected their position as a parliamentary party, in such a way, that they can no longer, without misunderstanding in the country, associate themselves with the Governor in the work of administration, then it is open to Ministers to resign. Or, if they do not resign and the Governor feels that his partnership with them cannot with profit to the public continue, it is open to a Governor, and indeed incumbent on him, to dismiss them. But the object of Governors, and, I feel confident, the object of the Ministers, will at all times be to avoid such a state of things arising. The mere fact that the Government of India Act covers contingencies such as the dismissal of Ministers, the breakdown of the constitution, or the like, is not for one moment to be taken as involving an assumption that the framers of the Act, those concerned with its administration, or anyone, indeed, who is concerned for the constitutional progress and the development of this

great country, wishes to see those contingencies turned into realities. 'The design of Parliament, and the object of those of us who are servants of the Crown in India and to whom it falls to work the provisions of the Act, must be and is to ensure the utmost degree practicable of harmonious co-operation with the elected representatives of the people for the betterment and improvement of each individual Province, and of India as a whole; and to avoid in every way, consistent with the Special Responsibilities for Minorities and the like which the Act imposes, any such clash of opinion as would be calculated unnecessarily to break down the machine of government, or to result in a severance of that fruitful partnership between the Governor and his Ministers which is the basis of the Act, and the ideal the achievement of which the Secretary of State, the Governor-General and the Provincial Governors are all equally concerned to secure.'

Servants of the Crown want 'harmonious co-operation' with popular representatives.

Before I take leave of you I feel that you would wish me, setting aside all technicalities, to speak to you for a moment or two as one who has had a good deal of Parliamentary experience and some share in the shaping of the new constitution. Some of you, I know, hold, and hold strongly, that the plan of reform does not go sufficiently far in the direction of complete self-government. I do not question the sincerity with which that view is held. But I am certain that every responsible person, in deciding his position on this vital matter, does so with a genuine anxiety in the best interests of India to take a balanced view and to reach a right decision as to what may best be done, in the conditions of this time, to serve those interests. Let me at once assure you that in my best judgement, and given good will on all sides, this constitution will work and that in experience it will be found to work well. It stands now as the law of the land. It stands, too,—and despite all the criticism that has been levelled against it—as the only complete and homogeneous scheme

The Act of 1935 will work well.

This constitution should be accepted and worked.

of political reform now before the country. I am convinced that the shortest road to that fuller political life which many of you so greatly desire is to accept this constitution, and to work it for all it is worth. Of their nature, politics are ever dynamic, and to imagine that their expression in terms of a written constitution can render them static would be utterly to disregard the lessons of history, and indeed, the dictates of common sense.

This constitution offers scope for public service.

Again, it is my firm conviction that this constitution will be found to offer immense opportunities for beneficent public service. And in this connection, I may venture a word upon a matter very close to my heart. It is my conviction that in the full working and development of this constitution lies the best hope for that general and lasting amelioration in the condition of the rural population and of the humbler sections of society which all of us so ardently desire.

'Choose the way of constructive effort'.

The discussions and debates of the last two months have, I think, placed before you every argument and point of view that bear upon this issue. The choice, a choice fraught with so much of profound significance for the future of India, must shortly be made. I hope with all my heart that all, whether leaders or their followers, may find it their duty to choose the way of constructive effort. Whatever emerges, you may count upon me, in face even of bitter disappointment, to strive untiringly towards the full and final establishment in India of the principles of Parliamentary Government. But if what I should regard as a deplorable outcome should emerge from the present situation and if Parliamentary and responsible government should as a consequence be suspended in a number of Provinces, it might, however much we might all of us regret it, be beyond the power of any of us rapidly to reverse the circumstances that must then supervene. In that event, invaluable time will be lost, and I greatly

Rejection of this constitution will 'inflict no little hurt upon the cause of progressive reform'.

fear, no little hurt inflicted upon the cause of progressive reform. But I do not believe that these sad things will come to pass, for I have faith in you and in the destiny of India. The way we tread may seem dark and sometimes difficult. The star that guides our course may seem sometimes to flicker and almost to fail. Yet faith and courage are mighty forces. Let us summon them to our aid in this difficult hour, and together move steadily forward towards the fulfilment of our hopes.

8. RESIGNATION OF TWO CONGRESS MINISTRIES, 1938.

[The Congress by its election manifesto was, among other things, pledged to the release of all political prisoners. Most of them were released in the different Congress Provinces. In U.P. and Bihar some prisoners convicted of violence remained in jail. Agitation for their release was going on in the country. In Bihar some political prisoners repatriated from the Andamans went on hunger strike. In U.P., though there was no hunger strike, the release of political prisoners could not be long delayed if the Congress was not to be accused of breaking its election pledges. It was well known that the prisoners had given up their faith in terrorist methods and violence. The Chief Ministers of the two Provinces had been insisting on their release; but the Governors were not agreeable. The former were compelled to arrive at the conclusion that, as heads of the Cabinets and as men primarily responsible for law and order, it was undignified for them to carry on a prolonged and fruitless controversy with the Governors. A great principle was involved. The Congress had accepted office on the clear understanding that there would be no interference with the Ministers in their legitimate constitutional day-to-day work. As the Governors refused to yield, and as they were supported by the Governor-General, the two Ministries resigned on February 15, 1938. A few days later the Governors and the Chief Ministers arrived at "agreed conclusions" and the Ministers resumed office.]

Differences
between
Governors
and
Ministers
on release
of political
prisoners

I. Statement of Lord Linlithgow, February 22, 1938.

The history of the difficulties which have arisen in the United Provinces and Bihar in connection

Distinction
between
individual
release and
general
release of
political
prisoners

with the release of prisoners described as political prisoners is well-known. In both Provinces discussions regarding the release of prisoners in this class have, for some time past, been proceeding between Ministers and Governors; and Governors throughout made it clear that they were ready and willing to examine individual cases and would not stand in the way of release, unless where circumstances were clearly such as to involve responsibilities laid upon them by the Act. . . .

Discussions regarding release after examination of individual cases were still proceeding, when on 14th February a demand was tendered by the Premiers of Bihar¹ and the United Provinces² for immediate general release of all prisoners classed as 'political' in those two Provinces. . . .

* * *

Why
Governor-
General
advised
Governors
to reject
Ministers'
advice

. . . having regard to the responsibilities which, under the Constitution, are placed upon the Governor-General, the Governors of both Provinces, after consulting their Ministers, referred for my instructions the advice which their Ministers had tendered.

Having regard to the circumstances described above³; to the essential necessity of considering the reaction on adjoining Provinces of the release of these prisoners; and to the fact that acceptance of the principle that terrorist convicts should be indiscriminately released without regard to individual considerations would be highly dangerous, and in view of the history of terrorism in the past, could not fail to give impetus to fresh terrorist organisation in Bengal, careful consideration left me with no choice but to conclude that issues involved were such that it

¹ Babu Sri Krishna Sinha.

² Pandit Govind Ballabh Pant.

³ "The prisoners in question are.....persons convicted of violence, or of preparation for specific acts of violence, by normal criminal courts".

was incumbent on me to issue an instruction¹ to those Governors under provisions of section 126 (5) of the Act².

* * *

The Governors, on receipt of my instructions, informed their Ministers that they could not accept their advice on this matter. The Ministers thereupon tendered their resignation³.

Resignation
of
Ministers

¹ The order issued by the Governor-General to the Governors of Bihar and the U.P. was as follows: ".....despite the advice in the contrary sense of your Ministers, you should decline to agree to the proposed general release of your political prisoners."

² This Section runs as follows: ".....the Governor-General, acting in his discretion, may at any time issue orders to the Governor of a Province as to the manner in which the executive authority thereof is to be exercised for the purpose of preventing any grave menace to the peace or tranquillity of India or any part thereof."

³ The Bihar Ministry wrote in the letter of resignation dated February 15, 1938, ".....We feel that conditions in which power in discharging special responsibilities in respect of peace and order could be legitimately exercised, do not exist in the Province. Nor are they likely to arise after release of 23 political prisoners on which, on grounds of policy and principle, we have insisted. We are not prepared to agree that release of these prisoners would have affected peace and tranquillity anywhere outside Bihar either. In this view of the matter we cannot but regard action of His Excellency the Governor-General, in a matter which is the primary concern of the Provincial Government, as a grave breach of the letter and the spirit of the constitution".

Views of
Bihar
Ministry

The U.P. Ministry wrote in the letter of resignation, dated February 15, 1938, ".....No Council of Ministers can discharge its functions satisfactorily if its considered opinion is disregarded arbitrarily in respect of momentous questions, strictly falling within their purview, by outside authority..... It is inconceivable that release of no more than 15 political prisoners.....can be a grave menace to peace and tranquillity of any Province in India The decision of the Governor-General is attributed to extra-provincial affairs and it is significant that action has been taken under Section 126 and not under Sec. 54, which suggests that the Governor of the Province does not consider that there is any menace to peace and tranquillity inside the Province itself.....We look upon this interference as an utter abuse, even of provisions of Section

Views of
U. P.
Ministry

No interference with 'legitimate' activities of Ministers

The Governors concerned, and I, so far as I am concerned, have done our utmost over the last seven months to work in harmonious co-operation with the Congress Ministers of both these Provinces and all possible help has been lent them. There has been no foundation over that period for any suggestion that it is the policy, or desire, of the Governor-General or of the Governors to impede or interfere with legitimate activities of these Ministries, or to take any step the necessity for which was not imposed upon them by the terms of the Act. That is equally true to-day.

* * *

Responsibilities imposed by the Act must be discharged by Governors and Governor-General.

. . . Ministers are responsible for law and order. But they are so responsible under the Act subject to the responsibility of Governors to ensure the peace and tranquillity of their own Province; and the Governors are bound to have in mind the corresponding responsibility that falls on the Governor-General for the peace and tranquillity of India or any part thereof. Neither a Governor nor the Governor-General will wish to see his responsibility attracted, but, as I made clear in my message of last June, where that responsibility is in fact attracted, neither the Governor nor the Governor-General can shrink from discharging it.

II. Statement of Mahatma Gandhi.

"Special pleading" of Governor-General

I have read the Governor-General's statement with the respect and attention it deserves . . . It reads like a special pleading unworthy of a personage possessing unheard of powers.

* * *

The Governors' duty and right are to advise their Ministers on questions of broad policy and

126(5), and it brings vividly home to us the unsubstantial character of autonomy which Provinces are supposed to enjoy; when advice of Council of Ministers can be trampled upon by one entirely outside the Province, and having no direct contact with it, and not a live part in its affairs."

warn them of the danger in their exercise of certain powers but, having done so, to leave their Ministers free to exercise their unfettered judgement. If such were not the case, responsibility would become a perfectly meaningless term and the Ministers responsible to their electors would have as their share nothing but odium and disgrace if their responsibility had to be shared with the Governors in the daily administration of affairs by law entrusted to them.

Responsibility of Ministers cannot be shared with Governors.

* * *

One thing I must say in connection with the exercise by His Excellency of his powers under Section 126 (5) . . . I have read the whole of it. It is entitled "control of Federation over the Provinces in certain cases." Unless the Sub-Sections have no connection with one another and are to be read independently of one another, my reading is that in the present case the exercise of powers under Sub-Section 5 of Section 126 is a manifest misapplication . . .

"Manifest misapplication" of Section 126(5)

III. Resolution of Congress, Haripura Session, 1938.

The experience of office by Congress Ministers in the Provinces has shown that at least in two Provinces, the U. P. and Bihar, there has in fact been interference in the day-to-day administration of Provincial affairs . . . In the opinion of the Congress, release of prisoners is a matter coming essentially within the purview of day-to-day administration, which does not admit of protracted discussion with Governors. The function of the Governor is to guide and advise Ministers, and not to interfere with the free exercise of their judgement in the discharge of their day-to-day duty . . .

Interference of Governors in U. P. and Bihar

In the opinion of the Congress, the interference of the Governor-General with the deliberate action of the respective Prime Ministers is not merely a violation of the assurance¹ . . . but it is also a mis-

Unjustified interference of Governor-General

¹ See Document No. 7.

application of Section 126 (5) of the Government of India Act. There was no question of grave menace to peace and tranquillity involved.

* * *

Congress
unwilling to
precipitate
crisis

The Congress does not desire to precipitate a crisis which may involve non-violent non-co-operation and direct action consistent with the Congress policy of truth and non-violence. The Congress is, therefore, at present reluctant to instruct Ministers in other Provinces to send in their resignations by way of protest against the Governor-General's action . . .

Real nature
of Act of
1935
revealed

When the Congress approved of acceptance of office, with great reluctance and considerable hesitation, it had no misgivings about its own estimate of the real nature of the Government of India Act. The latest action of the Governor-General justifies that estimate and not only exposes the utter inadequacy of the Act to bring real liberty to the people, but also shows the intention of the British Government to use and interpret it not for the expansion of liberty, but for its restriction . . .

9. LORD LINLITHGOW ON PROVINCIAL AUTONOMY, 1937-38.

I. Speech¹, March 15, 1937.

End of the
unitary
system

. . . The great provincial electorates have made their choice, and upon the first day of next month provincial autonomy becomes an accomplished fact. From that moment the unitary system of government which has for so long a period of time obtained in this country comes to an end, and the eleven Provinces of British India adventure forth upon their several ways . . . it is at a time such as this that the representative of the Crown, be he the Governor-General or the Governor of a Province, must needs

¹ At a dinner given by the President, Council of State, Sir Maneckji Dadabhoy.

remind himself that it is his bounden duty to stand above party interests and party differences, and to keep steadily before his mind his obligations not only to those whose cause has triumphed, but also to those who have tasted the bitterness of defeat . . . And again, I am bound at this time to remember the fundamental nature of the change that is about to take place as between the Centre and the Provinces. Indeed, it is of the essence of the system of government upon which we are embarking that it provides for each Province free play within the limits of domestic policy to develop in the manner best suited to the circumstances, political and economic, of those who dwell within its bounds. It is most necessary that those of us who approach this question from the viewpoint of the Central Government, whatever the sphere of our responsibility, should keep steadily before us the proper limits of our action towards the Provinces, and that we should respect scrupulously those limits from the moment that Provincial Autonomy becomes effective.

Duties of
Governors-
General
and
Governors

New
relations
between
the Centre
and the
Provinces.

II. Speech¹, December 19, 1938.

When we last met a year ago, Provincial Autonomy had been in operation for nine months. The experience of those nine months had left me confident that whatever difficulties lay ahead (and the possibility of difficulty and misunderstanding was as present then as it is to-day), the workability and the essential soundness of the scheme devised by Parliament had proved themselves; and that, whatever criticisms might be levelled on points of detail, the foundation was the right one, and, given understanding and good will, the scheme of Provincial Autonomy was sound and workable. I was confident too that the autonomous Provincial Governments, whatever party they represented, could in the work-

'Workability' and
'essential
soundness'
of scheme of
Provincial
Autonomy

¹ At Annual Meeting of the Associated Chambers of Commerce, Calcutta.

ing of Provincial Autonomy expect in the fullest measure from Governors, from the Services, and, in so far as he was concerned, from the Governor-General, friendly and ready co-operation.

'Loyal and willing co-operation' between Services and Ministers

Friendly relations between Governors and Ministers

Provincial Autonomy 'has proved a marked success'.

Another year's experience of the working of Provincial Autonomy leaves . . . no room for doubt on any of these points. The tributes which Ministers of all political parties have in recent months paid to the work of the great Services speak for themselves. I know from first hand how real is the importance which Ministers attach to the loyal and willing co-operation which they have received. I can speak equally from first hand of the friendly character of the relations between Governors, standing as the King's representatives, outside and above party, and their Ministers. As to the working of the special responsibilities, you will, I am sure, agree that the forecast which I gave in my message to India of June last year has been amply and fully realised . . . on a broad view, the great experiment of Provincial Autonomy, the transfer of real powers to Ministers elected by an electorate five times the size of any electorate that had previously voted in India, has proved a marked success.

10. MR. JINNAH ON MUSLIM CLAIMS, 1937-1938.

I. Presidential Address, All-India Muslim League, Lucknow Session, October, 1937.

League policy in 1936

. . . . On the 12th April, 1936, the Muslim League at its session, the first time in its history, undertook the policy and programme of mass contact. The League considered the prevailing conditions and surveyed the situation. We had to face the forthcoming elections on the eve of the inauguration of the new Provincial constitution embodied in the Government of India Act, 1935, and had no alternative but to enter the field and contest the elections to the Provincial Legislatures. It was also

felt that there was no alternative but to utilise the Provincial constitution for what it was worth, although it was far from being satisfactory. I may here reproduce the resolution that was passed on the 12th April, 1936:

"Whereas the Parliamentary system of government which is being introduced in this country with the inauguration of the new constitution presupposes the formation of parties with a well-defined policy and programme which facilitate the education of the electorate, and co-operation between groups with approximate aims and ideals and ensures the working of the constitution to the best advantage ; and whereas in order to strengthen the solidarity of the Muslim community and to secure for the Muslims their proper and effective share in the Provincial Governments, it is essential that the Muslims should organise themselves as one party, with an advanced and progressive programme, it is hereby resolved that the All-India Muslim League do take steps to contest the approaching Provincial elections. . . ."

League
resolution
of April 12,
1936

* * *

..... In each and every Province where League Parliamentary Board was established and the League Parties were constituted we carried away about 60 and 70 per cent. of the seats that were contested by the League candidates The Muslim League stands for full national democratic self-government for India There are some who talk of complete independence. But it is no use having complete independence on your lips and the Government of India Act, 1935, in your hands

Result of
elections

Ideal of the
League

The present leadership of the Congress, especially during the last ten years, has been responsible for alienating the Mussalmans of India more and more by pursuing a policy which is exclusively Hindu, and since they have formed the Governments in six Provinces where they are in a majority they have by their words, deed and programme shown more and

Charges
against
Congress

more that the Mussalmans cannot expect any justice or fair play at their hands. Wherever they are in a majority and wherever it suited them, they refused to co-operate with the Muslim League Parties and demanded unconditional surrender and signing of their pledges.

The demand was insistent, "Abjure your party and forswear your policy and programme and liquidate Muslim League";¹ but where they found that they had not a majority, like the North-West Frontier Province, their sacred principle of collective responsibility disappeared, and promptly the Congress Party was allowed in that Province to coalesce with any other group². Any individual Mussalman member who was willing to unconditionally surrender and sign their pledge was offered a job as a Minister and was passed off as a Mussalman Minister, although he did not command the confidence or the respect of an overwhelming majority of the Mussalman representatives in the Legislatures Hindi is to be the national language of all India, and *Bande Mataram* is to be the national song, and is to be forced upon all. The Congress flag is to be obeyed and revered by all and sundry. On the very threshold of what little power and responsibility is given, the majority community have clearly shown their hand that Hindustan is for the Hindus; only the Congress masquerades under the name of nationalism, whereas the Hindu Mahasabha does not mince words. The result of the present Congress Party policy will be, I venture to say, class bitterness, communal war and strengthening of the imperialistic hold as a consequence

. . . the responsibility of the British Government is no less in the disastrous consequences which may

Muslim
Ministers
in Congress
Provinces

Language,
national
song and
flag

'Hindustan
is for the
Hindus'.

¹ See Coupland, *The Constitutional Problem in India*, Part II, pp. 110-112.

² See Coupland, *The Constitutional Problem in India*, Part II, pp. 16, 121-123.

ensue. It has been clearly demonstrated that the Governor and the Governor-General who have been given the powers and special responsibility to safeguard and protect the minorities under the constitution . . . have failed to use them and have thereby been a party to the flagrant breach of the spirit of the constitution and the Instrument of Instructions in the matter of appointment of Muslim Ministers. On the contrary they have been a party to passing off men as Muslim Ministers by appointing them as such, although they know full well that they do not command the confidence of the Muslim representatives or the public outside. If, in a matter like this, the Governors have shown their utter helplessness and disregard for their sacred obligations which were assumed by the British Government for the protection of minorities, could they or would they be able to afford protection in hundred and one other matters which may not come up to the surface or be known in the day-to-day working of the Legislature and the administrative machinery ? . . . The one wholesome lesson that I ask the Mussalmans to learn, before it is too late, is that the path before the Mussalmans is therefore plain. They must realise that the time has come when they should concentrate and devote their energies to self-organization and full development of their power to the exclusion of every other consideration . . .

Governor-General and Governors have violated constitution by their failure to protect Muslim interests.

Lesson for Muslims

No settlement with the majority is possible, as no Hindu leader speaking with any authority shows any concern or genuine desire for it. Honourable settlement can only be achieved between equals, and unless the two parties learn to respect and fear each other, there is no solid ground for any settlement . . . It does not require political wisdom to realise that all safeguards and settlements would be a scrap of paper, unless they are backed up by power . . .

No settlement with Hindus possible

The Congress High Command speaks in different voices. One opinion is that there is no such thing as Hindu-Muslim question and there is no such thing

"The Congress High Command speaks in different voices."

as Minorities question in the country. The other high opinion is that if a few crumbs are thrown to the Mussalmans in their present disorganised and helpless state, you can manage them. They are sadly mistaken if they think that the Mussalmans can be imposed upon . . . The third opinion is that there is no light to be seen through the impenetrable darkness; but as the Congress goes on acquiring strength and power, so the past promises of the blank cheques remain unfilled and unsigned.

* * *

Congress
"has done
nothing" for
Muslims.

. . . The Congress with all its boasts has done nothing in the past for the Mussalmans. It has failed to inspire confidence and to create a sense of security amongst the Mussalmans and other Minorities. The Congress attempt under the guise of establishing mass contact with the Mussalmans is calculated to divide and weaken and break the Mussalmans, and is an effort to detach them from their accredited leaders. It is a dangerous move, and it cannot mislead any one . . . All the talk of hunger and poverty is intended to lead the people towards socialistic and communistic ideas for which India is far from prepared. The Muslim League in the present conditions considers the policy of direct action as suicidal and futile. Two such attempts have hitherto failed and have entailed untold misery and suffering to the people . . .

Criticism
of Congress
mass contact
programme

Failure of
Civil Dis-
obedience
movements

Criticism of
Congress
scheme of
Constituent
Assembly

To ask by a resolution the Governor-General to convey to the Secretary of State a request to call a Constituent Assembly on the basis of adult franchise is the height of all ignorance. It shows lack of any sense of proportion. A Constituent Assembly can only be called by a sovereign authority and from the seat of power . . . Who is to constitute the electorates on the basis of adult franchise, and how many representatives will be chosen by these electorates constituted on the basis of adult franchise, and what will happen to the Minorities in such constituencies,

and what will the electorates understand, and how will they make their choice of this special body of men with final authority and power to frame the constitution of this great sub-continent? . . .

Taking the country as a whole, the Congress is still far from occupying the seat of authority, and it is a travesty of realities to think of British Government calling a Constituent Assembly and the ability of the Congress to do so is pure moonshine . . . To ask the foreign Government who is the ruling and sovereign authority in this country to convene such a body before even the communal problem has been solved and before all important communities of India have accepted the leadership of the Congress is like putting the cart before the horse, and to forget that one-third of India stands on a very special footing constituting the Indian States and Ruling Princes.

British Government will not call a Constituent Assembly.

II. Presidential Address, All-India Muslim League, Patna Session, December, 1938.

. . . One thing has been demonstrated beyond doubt, namely, that the Congress High Command wanted the Mussalmans to be a mere under-study of the Congress, mere foot-pages of the Congress leaders, to be used, governed and brought under the heels when they had served the purpose of the Congress. The Congress leaders wanted them to submit unconditionally to the Hindu *Raj*. That game has now been fully exposed . . .

Congress attempt to establish Hindu Raj has been fully exposed.

The Congress has now . . . killed every hope of Hindu-Muslim settlement in the right royal fashion of Fascism. . . . The Congress High Command make the preposterous claim that they are entitled to speak on behalf of the whole of India, that they alone are capable of delivering goods. Others are asked to accept the gift as from a mighty sovereign. The Congress High Command declare that they will redress the grievances of the Muslims, and they expect the Muslims to accept the declaration . . . We Mus-

Congress Fascism

'Preposterous claim' of Congress

Muslims
want rights,
not conces-
sions.

lims want no gifts. The Muslims want no concessions. We Muslims of India have made up our mind to have our fullest rights, but we shall have them as rights, not as gifts or concessions.

Congress is
not a
national
body.

. . . the Congress leaders may cry as much as they like that Congress is a national body. But I say it is not true. The Congress is nothing but a Hindu body . . . The presence of the few Muslims—the few misled and misguided ones and the few who are there with ulterior motives—does not, cannot make it a national body . . .

* * *

Charges
against
Congress:

. . . Intoxicated with power gained under the new constitution, with the majority in six or seven provinces, the Congress game has been exposed a little too soon. What did the Congress do when it got the power? With all its pretensions of nationalism, it straightaway started with *Bande Mataram*. It is admitted that *Bande Mataram* is not the national song, yet it is sung as such and thrust upon others . . . It is idolatrous and a hymn of hate against Muslims.

(1) *Bande
Mataram*

(2) Congress
flag

Take the case of the Congress flag. Admittedly it is not the national flag of India . . . It does not matter if the Muslims object to it, the Congress flag must be paraded as the national flag of India and thrust upon the Muslims.

(3) Hindi

Take next the case of Hindi-Hindustani . . . Is there any doubt now in the mind of any one that the whole scheme of Hindi-Hindustani is intended to stifle and suppress Urdu?

(4) Wardha
scheme of
education

Take next the Wardha scheme of education . . . Who is the author of the scheme? . . . Mr. Gandhi. . . it is Mr. Gandhi who is destroying the ideal with which the Congress was started. He is the one man responsible for turning the Congress into an instrument for the revival of Hinduism . . .

To-day Hindu mentality, Hindu outlook, is being

carefully nurtured and Muslims are being forced to accept Hindu ideals in their daily life. . . .

* * *

The next question that you will have to consider is that of the Federation. Let the Congress continue to say that they will never accept the Federation . . . The Congress will tumble into it just as it tumbled into the Provincial part of the constitution . . .

* * *

The Congress game with regard to Federation is very clear. If the Congress can gain the control over the Federal machinery, then, by means of direct and indirect powers vested in the Federal Government, the Congress would be able to reduce to nonentity the Government of the Hon'ble Mr. Fazl-ul-Huq in Bengal and the Hon'ble Sir Sikandar Hyat Khan in the Punjab. Soon in the end the Congress will have seven Provinces where they enjoy overwhelming numerical majority as a gift of God, and the other four Provinces where Muslims dominate will be the feudatories of the Congress High Command.

Congress
"game"
regarding
Federation

Congress
plan to
dominate
Muslim-
majority
Provinces

If I am right in judgement, that is the objective of the Congress. Therefore, I say the Congress opposition to the Federation is not honest . . .

11. CONGRESS AND THE WAR, 1939.

1. Resolution of Working Committee, September 14, 1939.

The Working Committee have given their earnest consideration to the grave crisis that has developed owing to the declaration of war in Europe. The principles which should guide the nation in the event of a war have been repeatedly laid down by the Congress, and only a month ago the Committee reiterated them and expressed their displeasure at the flouting of Indian opinion by the British Govern-

Congress
disapproval
of Govern-
ment policy
towards
war

ment in India. As a first step to dissociate themselves from this policy of the British Government the Committee called upon the Congress members of the Central Legislative Assembly to refrain from attending the next session. Since then the British Government have declared India as a belligerent country, promulgated Ordinances, passed the Government of India Act Amending Bill and taken other far-reaching measures which affect the Indian people vitally, and circumscribe and limit the powers and activities of the Provincial Governments. This has been done without the consent of the Indian people whose declared wishes in such matters have been deliberately ignored by the British Government. The Working Committee must take the gravest view of these developments.

Congress
disapproval
of Fascism
and Nazism

The Congress has repeatedly declared its entire disapproval of the ideology and practice of Fascism and Nazism and their glorification of war and violence and the suppression of the human spirit. It has condemned the aggression in which they have repeatedly indulged and their sweeping away of well-established principles and recognised standards of civilised behaviour. It has seen in Fascism and Nazism the intensification of the principle of Imperialism against which the Indian people have struggled for many years. The Working Committee must, therefore, unhesitatingly condemn the latest aggression of the Nazi Government in Germany against Poland and sympathise with those who resist it.

"Issue of
war and
peace for
India
must be
decided
by the
Indian
people".

The Congress has further laid down that the issue of war and peace for India must be decided by the Indian people, and no outside authority can impose this decision upon them, nor can the Indian people permit their resources to be exploited for imperialist ends. Any imposed decision, or attempt to use India's resources for purposes not approved by them, will necessarily have to be opposed by them. If co-operation is desired in a worthy cause,

this cannot be obtained by compulsion and imposition, and the Committee cannot agree to the carrying out by the Indian people of orders issued by external authority. Co-operation must be between equals by mutual consent for a cause which both consider to be worthy. The people of India have in the recent past faced great risks and willingly made great sacrifices to secure their own freedom and to establish a free democratic State in India, and their sympathy is entirely on the side of democracy and freedom. But India cannot associate herself in a war said to be for democratic freedom when that very freedom is denied to her and such limited freedom as she possesses taken away from her.

The Committee are aware that the Governments of Great Britain and France have declared that they are fighting for democracy and freedom and to put an end to aggression. But the history of the recent past is full of examples showing the constant divergence between the spoken word, the ideals proclaimed, and the real motives and objectives. During the war of 1914—18 the declared war aims were preservation of democracy, self-determination, and the freedom of small nations, and yet the very Governments which solemnly proclaimed these aims entered into secret treaties embodying imperialist designs for the carving up of the Ottoman Empire. While stating that they did not want any acquisition of territory, the victorious Powers added largely to their colonial domains. The present European war itself signifies the abject failure of the treaty of Versailles and of its makers, who broke their pledged word and imposed an imperialist peace on the defeated nations. The one hopeful outcome of that treaty, the League of Nations, was muzzled and strangled at the outset and later killed by its parent States.

Declarations of Britain and France to be judged in the light of experience of First World War

Subsequent history has demonstrated afresh how even a seemingly fervent declaration of faith may be followed by an ignoble desertion. In Manchuria the British Government connived at aggression; in

Recent
develop-
ments in
Asia,
Africa and
Europe

Abyssinia they acquiesced in it. In Czechoslovakia and Spain democracy was in peril and it was deliberately betrayed, and the whole system of collective security was sabotaged by the very Powers who had previously declared their firm faith in it.

Defence of
democracy?

Again it is asserted that democracy is in danger and must be defended and with this statement the Committee are in entire agreement. The Committee believe that the people of the West are moved by this ideal and objective and for these they are prepared to make sacrifices. But again and again the ideals and sentiments of the people and of those who have sacrificed themselves in the struggle have been ignored and faith has not been kept with them.

If the war is to defend the *status quo*, imperialist possessions, colonies, vested interests and privileges, then India can have nothing to do with it. If, however, the issue is democracy and a world order based on democracy, then India is intensely interested in it. The Committee are convinced that the interests of Indian democracy do not conflict with the interests of British democracy or of world democracy. But there is an inherent and ineradicable conflict between democracy for India or elsewhere and imperialism and Fascism.

"Free
democratic
India"
prepared
to co-oper-
ate with
other free
nations

If Great Britain fights for the maintenance and extension of democracy, then she must necessarily end Imperialism in her own possessions and establish full democracy in India, and the Indian people must have the right of self-determination by framing their own constitution through a Constituent Assembly without external interference, and must guide their own policy. A free democratic India will gladly associate herself with other free nations for mutual defence against aggression and for economic co-operation. She will work for the establishment of a real world order based on freedom and democracy, utilising the world's knowledge and resources for the progress and advancement of humanity.

The crisis that has overtaken Europe is not of Europe only but of humanity and will not pass like crises or wars leaving the essential structure of the present-day world intact. It is likely to refashion the world for good or evil politically, socially and economically. This crisis is the inevitable consequence of the social and political conflicts and contradictions which have grown alarmingly since the last Great War, and it will not be finally resolved till those conflicts and contradictions are removed and a new equilibrium established. That equilibrium can only be based on ending of the domination and exploitation of one country by another and on a re-organisation of economic relations on a juster basis for the common good of all. India is the crux of the problem, and no refashioning of the world can succeed which ignores this vital problem. With her vast resources she must play an important part in any scheme of world re-organisation. But she can only do so as a free nation whose energies have been released to work for this great end. Freedom to-day is indivisible and every attempt to retain imperialist domination in any part of the world will lead inevitably to disaster.

The Working Committee have noted that many Rulers of Indian States have offered their services and resources and expressed their desire to support the cause of democracy in Europe. If they must make their professions in favour of democracy abroad, the Committee would suggest that their first concern should be the introduction of democracy in their own States in which to-day undiluted autocracy reigns supreme. The British Government in India is more responsible for this autocracy than even the Rulers themselves, as has been made painfully evident during the past year. This policy is the very negation of democracy and of the new world order for which Great Britain claims to be fighting in Europe.

As the Working Committee view past events in

Congress
cannot co-
operate with
imperialist
war.

Europe, Africa and Asia, and more particularly past and present occurrences in India, they fail to find any attempt to advance the cause of democracy or self-determination or any evidence that the present war declarations of the British Government are being, or are going to be, acted upon. The true measure of democracy is the ending of Imperialism and Fascism alike and the aggression that has accompanied them in the past and the present. Only on that basis can a new order be built up. In the struggle for that new world order the Committee are eager and desirous to help in every way, but the Committee cannot associate themselves or offer any co-operation in a war which is conducted on imperialistic lines and which is meant to consolidate imperialism in India and elsewhere¹.

British
Govern-
ment
invited to
declare
war aims.

In view, however, of the gravity of the occasion and the fact that the pace of events during the last few days has often been swifter than the working of men's minds, the Committee desire to take no final decision at this stage so as to allow for the full elucidation of the issues at stake, the real objectives aimed at, and the position of India in the present and in the future. But the decision cannot be long delayed as India is being committed from day to day to a policy to which she is not a party and of which she disapproves.

Will India
be treated
as a free
nation ?

The Working Committee, therefore, invite the British Government to declare in unequivocal terms what their war aims are in regard to democracy and Imperialism and the new order that is envisaged, in particular, how these aims are going to apply to India and to be given effect to in the present. Do they include treatment of India as a free nation whose policy will be guided in accordance with the

¹ Mahatma Gandhi advocated the view that "whatever support was to be given to the British should be given unconditionally", but he could not persuade the Working Committee to offer unconditional co-operation. *Vide* his statement dated September 16, 1939.

wishes of her people? A clear declaration about the future, pledging the Government to the ending of Imperialism and Fascism alike, will be welcomed by the people of all countries, but it is far more important to give immediate effect to it to the largest possible extent, for only this will convince the people that the declaration is meant to be honoured. The real test of any declaration is its application in the present, for it is the present that will govern action to-day and give shape to the future.

Sincerity of British declaration to be tested by its application to present issues.

War has broken out in Europe and the prospect is terrible to contemplate. But war has been taking its heavy toll of human life during the past year in Abyssinia, Spain and China. Innumerable innocent men, women and children have been bombed to death from the air in open cities. Cold-blooded massacres, tortures and utmost humiliation have followed each other in quick succession during these years of horror. That horror grows, and violence and the threat of violence shadow the world, and unless checked and ended, will destroy the precious inheritance of past ages. That horror has to be checked in Europe and China but it will not end till its root causes, Fascism and Imperialism, are removed. To that end the Working Committee are prepared to give their co-operation. But it will be an infinite tragedy if even this terrible war is carried on in the spirit of imperialism and for the purpose of retaining this structure which is itself the cause of war and human degradation.

Increasing horrors of war in different parts of the world

War against Fascism should not be carried on in the spirit of imperialism.

The Working Committee wish to declare that the Indian people have no quarrel with the German people or the Japanese people or any other people, but they have a deep-rooted quarrel with the systems which deny freedom and are based on violence and aggression. They do not look forward to a victory of one people over another or to a dictated peace but to a victory of real democracy for all the people of all the countries and a world freed from the nightmare of violence and imperialist aggression.

India's quarrel is with Fascism, not with Germans or Japanese.

Appeal to
Indian
people

The Committee earnestly appeal to the Indian people to end all internal conflict and controversy and in the grave hour of peril to keep in readiness and hold together as a united nation, calm of purpose and determined to achieve the freedom of India within the larger freedom of the world.

II. Resolution of Working Committee, October 22, 1939.

Viceroy's
Statement
unsatis-
factory

The Working Committee are of opinion that the Viceregal statement¹ in answer to the Committee's invitation for a clear declaration of Britain's war aims, particularly in their application to India, is wholly unsatisfactory and calculated to rouse resentment among all those who are anxious to gain, and are intent upon gaining, India's independence. This invitation was made not only on behalf of the people of India, but for millions of people all over the world, who were weary of war and violence, and Fascist and Imperialist systems which exploited nations and peoples and were ultimately the causes of war, and who yearned for a new order of peace and freedom. The Viceregal statement is an unequivocal reiteration of the old imperialistic policy. The Committee regard the mention of the differences among several parties as a screen to hide the true intention of Great Britain. What the Committee had asked for was a declaration of war aims as a test of Britain's *bona fides* regarding India, irrespective of the attitude of opposing parties and groups. The Congress has always stood for the amplest guarantee of the rights of Minorities. The freedom the Congress claimed was not for the Congress or any particular group or community, but for the nation and for all communities in India that go to build that nation. The only way to establish this freedom and to ascertain the will of the nation as a whole is through a democratic process which gives full opportunity to

Congress
wants
freedom
for all,
including
Minorities.

¹ See Document No. 10.

all. The Committee must, therefore, regard the Viceroy's statement as in every way unfortunate. In the circumstances, the Committee cannot possibly give any support to Great Britain, for it would amount to an endorsement of the imperialist policy which the Congress has always sought to end. As a first step in this direction the Committee call upon the Congress Ministries to tender their resignations.

The Committee earnestly appeal to the nation to end all internal controversies in this hour of great crisis and to act unitedly in the cause of India's freedom. The Committee call upon all Congress Committees and Congressmen generally to be prepared for all developments and eventualities, and to show restraint of word and deed so that nothing may be said or done which is not in keeping with India's honour or the principles for which the Congress stands. The Committee warn Congressmen against any hasty action in the shape of civil disobedience, political strikes and the like. The Committee will watch the situation and the activities of the British Government in India, and will not hesitate to guide the country to take further steps whenever the necessity for this arises. The Committee desire to impress upon all Congressmen that a programme of resistance, commensurate with the magnitude of the issue before the country, requires perfect discipline within Congress ranks and the consolidation of the Congress organisation.

Call for
preparation
for
resistance

The Working Committee realise that the non-violent resistance offered by the Congress in the past has sometimes been mixed with violence. The Committee desire to impress upon all Congressmen that any resistance that may have to be offered must be purged of all violence, and to remind them of the pledges taken to this effect as early as 1921 during the Congress session at Ahmedabad and repeated on many subsequent occasions.

Insistence
on non-
violence

III. Resolution on war crisis in Provincial Assemblies.

[The following resolution was moved by Premiers in the Provincial Assemblies of Madras, Central Provinces, Bihar, U.P., Bombay, Orissa and North-West Frontier Province. It was passed by large majorities in the seven provinces. In U.P. and C.P. Assemblies it was passed with slight amendments which were accepted by the Congress party.]

Protest
against
dragging
India
into war

This Assembly regrets that the British Government have made India a participant in the war between Great Britain and Germany without the consent of the people of India and have further in complete disregard of Indian opinion passed laws and adopted measures curtailing the powers and activities of the Provincial Governments.

National
demand

This Assembly recommends to the Government to convey to the Government of India and through them to the British Government that in consonance with the avowed aims of the present war, it is essential in order to secure the co-operation of the Indian people that the principle of democracy with effective safeguards for the Muslims and other minorities be applied to India and her policy be guided by her people; and that India should be regarded as an independent nation entitled to frame her own constitution and further that suitable action should be taken in so far as it is possible in the immediate present to give effect to that principle in regard to present governance of India.

Provincial
Government
"cannot
associate
itself with
British
policy".

This Assembly regrets that the situation in India has not been rightly understood by His Majesty's Government when authorising the statement that has been made on their behalf in regard to India, and in view of this failure of the British Government to meet India's demand this Assembly is of opinion that the Government cannot associate itself with British policy.

IV. Resolution of Working Committee, Allahabad, November 23, 1939.

The Working Committee have noted with pleasure the response of the country to the policy enun-

ciated by them in regard to the war crisis in Europe and its repercussions in India. This policy, based on numerous declarations of the Congress, was laid down in the statement issued by the Committee on September 14, 1939, and subsequent events have amply justified its wisdom and expediency. The course of the war and the policy pursued by the British and French Governments, and, in particular, the declarations made on behalf of the British Government in regard to India, seem to demonstrate that the present war, like the World War of 1914-1918, is being carried on for imperialist ends, and British imperialism is to remain entrenched in India. With such a war and with this policy the Congress cannot associate itself, and it cannot countenance the exploitation of India's resources to this end.

War for
imperialist
ends

The Working Committee's unequivocal demand was for a declaration of war aims in regard to democracy and imperialism and in particular how these aims were going to be applied to India. These aims could only be considered worthy if they included the elimination of imperialism and the treatment of India as an independent nation whose policy would be guided in accordance with the wishes of her people. The answer to this demand has been entirely unsatisfactory and an attempt has been made on behalf of the British Government to create misunderstandings and to befog the main and moral issue. In justification of this refusal to make a declaration in terms of the Working Committee's resolution, communal pleas have been advanced and the rights of minorities and of the Princes pleaded as a barrier to India's freedom. The Committee wish to declare with all emphasis that no communal considerations arise in meeting the demand of the Congress, and the minorities, whatever their other differences might be, do not oppose India's right to freedom and independence. The Princes are represented by, and are the emblems of, the Paramount Power in India. In the end it will be the people of the Indian States

Barriers
to India's
freedom

Reply of
Congress

who will determine what part they will take in a free India, though the British Government has consistently ignored their wishes in a matter which vitally affects them. In any event the wishes of those who may oppose India's independence are, and must be irrelevant to the declaration of the British Government's intentions. The Committee can only interpret this attempt to avoid a statement on war aims and Indian freedom, by taking shelter under irrelevant issues, as a desire to maintain imperialist domination in India in alliance with the reactionary elements in the country.

No spirit
of
bargaining

The Congress has looked upon the war crisis and the problems it raises as essentially a moral issue, and has not sought to profit by it in any spirit of bargaining. The moral and dominant issue of war aims and India's freedom has to be settled satisfactorily before any other subsidiary question can be considered. In no event can the Congress accept the responsibility of government, even in the transitional period, without real power being given to popular representatives. . . .

Demand for
Constituent
Assembly

The Committee wish to declare again that the recognition of India's independence and of the right of her people to frame their constitution through a Constituent Assembly, is essential in order to remove the taint of imperialism from Britain's policy and to enable the Congress to consider further co-operation. They hold that a Constituent Assembly is the only democratic method of determining the constitution of a free country, and no one who believes in democracy and freedom can possibly take exception to it. The Working Committee believe too that the Constituent Assembly alone is the adequate instrument for solving the communal and other difficulties. This, however, does not mean that the Working Committee will relax their efforts for arriving at a solution of the communal problem. This Assembly can frame a constitution in which the rights of accepted minorities would be protected to their

satisfaction, and in the event of some matters relating to minority rights not being mutually agreed to, they can be referred to arbitration. The Constituent Assembly should be elected on the basis of adult suffrage, existing separate electorates being retained for such minorities as desire them. The number of members in the Assembly should reflect their numerical strength.

The declarations made on behalf of the British Government, being inadequate, have compelled the Congress to dissociate itself from British policy and war effort, and as a first step in non-co-operation, to bring about the resignation of all Congress Governments in the Provinces. That policy of non-co-operation continues and must continue unless the British Government revises its policy and accepts the Congress contention. The Working Committee would, however, remind Congressmen that it is inherent in every form of Satyagraha that no effort is spared to achieve an honourable settlement with the opponent. While a Satyagrahi is ever ready for a non-violent fight, if it has to come, he never relaxes his effort for peace and always works for its attainment. The Working Committee will, therefore, continue to explore the means of arriving at an honourable settlement, even though the British Government has banged the door in the face of the Congress. The Committee must, however, resist by the non-violent methods of the Congress all attempts to coerce the people of India along paths which are not of their choice and everything that is against the dignity and freedom of India.

Policy of
non-co-
operation

Wanted
honourable
settlement

12. MUSLIM LEAGUE ON THE WAR¹.

The Committee are of opinion that the views expressed by the Council of the All-India Muslim League by its resolution No. 8 of August 27, 1939, in the following words: 'While deploring the policy of the British Government towards the Muslims of India by attempting to force upon them against their

¹ Resolution, September 18, 1939.

Condemnation of Federal Scheme.

will a constitution and in particular the Federal Scheme as embodied in the Government of India Act, 1935, which allows a permanent hostile communal majority to trample upon their religious, political, social and economic rights and the utter neglect and indifference shown by the Viceroy and the Governors in the Congress-governed provinces in exercising their special powers to protect and secure justice to the minorities; and towards the Arabs in Palestine in refusing to meet their demands, holds the view that in these circumstances if the British Government desires to enlist the support and the sympathy of the Muslims of the world and particularly of the Indian Muslims in future contingencies it must meet the demands of the Muslims of India without delay,' are the true sentiments and opinions of the Mussalmans of India.

Suspension of Federal Scheme

The Working Committee appreciate the declaration of H. E. the Viceroy, which is in the interest of India and particularly the Mussalmans, that the Federal Scheme embodied in the Government of India Act, 1935, has been suspended¹. They wish that instead of its being suspended, it had been abandoned completely and desire to convey to His Majesty's Government that they should do so without further delay. The Committee desire to make it clear that they do not endorse the "Federal objective" of His Majesty's Government referred to by H. E. the Viceroy in his address to the members of the Central Legislature and strongly urges upon the British Government to review and revise the entire problem of India's future constitution *de novo* in the light of the experience gained by the working of the present provincial constitution of India and developments that have taken place since 1935 or may take place hereafter.

Constitutional problem to be studied *de novo*

¹ In his address to the Central Legislature (September 11, 1939) Lord Linlithgow declared that all preparations for the introduction of Federation had been suspended, but the objective of Federation was still intact.

The Committee, in this connection, wish to point out that Muslim India occupies a special and peculiar position in the polity of India, and for several decades it had hoped to occupy an honourable place in the national life, government and administration of the country and worked for a free India with free and independent Islam in which they could play an equal part with the major community with a complete sense of security for their religious, political, cultural, social and economic rights and interests; but the developments that have taken place, and especially since the inauguration of the provincial constitution based on the so-called democratic parliamentary system of government, and the recent experiences of over two years have established beyond doubt that it has resulted wholly in a permanent communal majority and the domination of the Hindus over the Muslim minorities whose life and liberty, property and honour, are in danger and even their religious rights and culture are being assailed and annihilated every day under the Congress Government in various provinces.

Special
position of
Muslims

Provincial
Autonomy
condemned

That while Muslim India stands against exploitation of the people of India and has repeatedly declared in favour of a free India it is equally opposed to the domination of the Hindu majority over Mussalmans and other minorities and vassalization of Muslim India and is irrevocably opposed to any "Federal objective" which must, necessarily result in a majority community rule under the guise of democracy and a parliamentary system of government. Such a constitution is totally unsuited to the genius of the peoples of the country which is composed of various nationalities and does not constitute a national State.

Opposition
to domina-
tion of
Hindu
majority

The Muslim League condemns unprovoked aggression and the doctrine that 'might is right' and upholds the principles of freedom of humanity and 'that the will of the strongest irrespective of right

Condition
for Muslim
co-operation
with British
Govern-
ment

and justice cannot be allowed to prevail.' The Committee express their deep sympathy for Poland, England and France. The Committee, however, feels that real and solid Muslim co-operation and support to Great Britain in this hour of her trial cannot be secured successfully if His Majesty's Government and the Viceroy are unable to secure to the Mussalmans justice and fairplay in the Congress-governed provinces where today their liberty, person, property and honour are in danger and even their elementary rights are most callously trampled upon. The Committee strongly urge upon His Majesty's Government and the Viceroy and Governor-General to direct the Governors to exercise their special powers where any Provincial Ministry fail to secure justice and fairplay to the Mussalmans or where they resort to oppression or interference with their political, economic, social and cultural rights, in accordance with the sacred promises, assurances and declarations repeatedly made by Great Britain, in consequence of which these special powers were expressly embodied in the statute. The Committee regret to say that so far these special powers have remained dormant and obsolete and the Governors have failed to protect the rights of the Mussalmans under the threat by the High Command of the Congress that exercise of these special powers on the part of the Governors will lead to a crisis in all the Congress-governed provinces where they are in solid majority.

Special
powers of
Governors
invoked

League
wants
veto on
India's
progress.

While the Muslim League stands for the freedom of India, the Committee further urge upon His Majesty's Government and asks for an assurance that no declaration regarding the question of constitutional advance for India should be made without the consent and approval of the All-India Muslim League nor any constitution be framed and finally adopted by His Majesty's Government and the British Parliament without such consent and approval.

* * * *

If full, effective and honourable co-operation of the Mussalmans is desired by the British Government in the grave crisis which is facing the world today and if it is desired to bring it to a successful termination it must create a sense of security and satisfaction amongst the Mussalmans and take into its confidence the Muslim League which is the only organisation that can speak on behalf of Muslim India.

Muslim League is "the only organisation that can speak on behalf of Muslim India".

13. THE BRITISH GOVERNMENT AND THE WAR.

I. Statement of Lord Linlithgow, October 18, 1939.

The essential matters on which a clarification of the position is beyond any question desired are:—

Three essential matters for clarification

First, what are the objectives of His Majesty's Government in the war? To what extent are they of such a character that India with her long history and great traditions can, with a clear conscience, associate herself with them?

Second, what is the future that is contemplated in the constitutional sphere for the Indian continent? What are the intentions of His Majesty's Government? Is it possible to define those intentions more precisely and in such a manner as to leave the world in no doubt as to the ultimate status envisaged for India as far as the British Commonwealth is concerned?

Third, in what way can the desire of India and of Indian public opinion for a closer association, and an effective association, with the prosecution of the war be satisfied?

* * * *

We are fighting to resist aggression whether directed against ourselves or others. Our general aims have been stated by the Prime Minister within

General
aims of
British
Govern-
ment
defined by
Prime
Minister

the last few days as follows:—"We are seeking no material advantage for ourselves. We are not aiming only at victory, but looking beyond it to laying the foundation of a better international system which will mean that war is not to be the inevitable lot of each succeeding generation. We, like all the peoples of Europe, long for peace, but it must be a real and settled peace, not an uneasy truce interrupted by constant alarms and threats." This statement, I think, clearly establishes the nature of the cause for which we are fighting, and justifies, if justification is needed, the extension by India of her moral support and her goodwill to the prosecution of that cause.

Future
constitu-
tional deve-
lopment
of India

Let me turn now to the second question which has been put to me—the question of India's future and of the lines of her constitutional development. . . . As matters stand to-day, the constitutional position of India and the policy of His Majesty's Government are governed by the provisions of the Government of India Act, 1935. Part III of that Act, which provides for the conferment of Provincial Autonomy on the Provinces of British India, has been implemented. For nearly two and a half years now the Provinces have been conducting their own affairs under the scheme of the Act. That they have done so, on the whole, with great success, even if now and then difficulties have arisen, no one can question. Whatever the political party in power in those Provinces, all can look with satisfaction on a distinguished record of public achievement during the last two and a half years. The experience that they have had has shown beyond any question that whatever minor problems the application of the scheme of the Act may have presented, whatever difficulties may have confronted us in the operation of the Act from time to time in the Provincial sphere, the scheme of the Act is essentially sound, and that it transfers great power and great opportunities to popularly elected Governments dependent on the support of a majority in their Legislatures.

Value of
Provincial
Autonomy

The second stage contemplated by the Act was the reconstitution of the Central Government on such a basis as to achieve the essential goal of Indian unity. The method contemplated for that purpose was the achievement of a Federation of All-India, in which the representatives of all political parties in British India would, together with the Rulers of the Indian States, form a unified Government of India as a whole. I am only too conscious of the severity of the criticisms that have been advanced from many different points of view against the Federal scheme and against the arrangements embodied in Part II of the Act. I will say to-day no more than that, having myself had so close a familiarity not only with the framing of the provisions, but with the preliminary work which has been done with a view to putting them into force, I have throughout believed that the Federal Scheme in its operation would have turned out as satisfactorily as, broadly speaking, we can all of us regard the scheme of Provincial Autonomy as having turned out. I will not dilate on that subject to-day, for our work in connection with the Federal Scheme has been suspended. But in reaffirming, as I do, my belief in the essential soundness of the Federal aspects of the Act of 1935, I do so with the greater emphasis because of the evidence which the Federal provisions of the Act constitute, of the anxiety of His Majesty's Government to achieve, with the minimum of delay, and on the basis which appears to represent the greatest amount of agreement between the various parties and interests affected by the unity of India, and to advance beyond a further and a most important milestone on the road to India's goal.

Question of
Federation

"Essential
soundness"
of Federal
Scheme

Such being the background against which we are working, what are the intentions and aims of His Majesty's Government in relation to India? I cannot do better in reply to that question than to refer to the statement made on behalf of His Majesty's Government, and with their full authority,

Previous
statements
on British
policy

by the late Secretary of State for India in the House of Commons on February 6, 1935. That statement makes the position clear beyond a shadow of doubt. It refers to the pledge given in the Preamble of the Act of 1919, and it makes it clear that it was no part of the plan of His Majesty's Government to repeal that pledge. It confirms equally the interpretation placed in 1929 by Lord Irwin as Viceroy, again on the authority of the Government of the day, on that Preamble, that "the natural issue of India's progress as there contemplated is the attainment of Dominion Status." I need not dilate on the words of that statement. They are clear and positive. They are enshrined in the Parliamentary record. They stand as a definite and categorical exposition of the policy of His Majesty's Government to-day, and of their intentions to-day in this end—the future constitutional development and position of India. I would add only that the Instrument of Instructions issued to me as Governor-General by His Majesty the King-Emperor in May, 1937, lays upon me as Governor-General a direction so to exercise the trust which His Majesty has reposed in me "that the partnership between India and the United Kingdom within our Empire may be furthered to the end that India may attain its due place among our Dominions."

That is the policy and that is the position. Those are the intentions of His Majesty's Government. Let me go on to say another word about the Act of 1935. That Act was based on the greatest measure of common agreement which it was possible to obtain at the time when it was framed. It was based, as is well-known to all of us, on the common labours of British and Indian statesmen, and of representatives of British India as well as of the Indian States over a long period of years. All parties were at one stage or other closely associated with those deliberations, and I can speak from personal experience when I bear tribute to the extreme

Act of 1935
based on
common
agreement

anxiety of all those of us on whom, in the Joint Select Committee, there fell the more particular responsibility for devising proposals for the consideration of Parliament, to ensure that the fullest account had been taken of all interests, of the views of all political parties; and that nothing had been left undone to ensure that the outcome of our labours reflected the greatest measure of agreement practicable in the conditions that confronted us.

Be that as it may, His Majesty's Government recognise that when the time comes to resume consideration of the plan for the future Federal Government of India, and of the plan destined to give effect to the assurances given in Parliament by the late Secretary of State, to which I have just referred, it will be necessary to reconsider in the light of the then circumstances to what extent the details of the plan embodied in the Act of 1935 remain appropriate. And I am authorised now by His Majesty's Government to say that at the end of the war they will be very willing to enter into consultation with representatives of the several communities, parties, and interests in India, and with the Indian Princes, with a view to securing their aid and co-operation in the framing of such modifications as may seem desirable.

I have, I trust, in what I have just said, made clear that the intention and the anxiety of His Majesty's Government is, as stated in the Instrument of Instructions to the Governor-General, to further the partnership between India and the United Kingdom within the Empire to the end that India may attain her due place among the great Dominions. The scheme of government embodied in the Act of 1935 was designed as an essential stage in that process. But I have made clear in what I have just said that His Majesty's Government will, at the end of the war, be prepared to regard the scheme of the Act as open to modification in the light of Indian views. And I would make it clear, too, that it will be their object, as at all times in the past it has

Question of
revising
Act of 1935

Act of 1935
open to
modification
in the light
of Indian
views after
war

been, to spare no pains to further agreement by any means in their power in the hope of contributing to the ordered and harmonious progress of India towards her goal.

Assurance
to minori-
ties

Let me in that connection add that in the conversations I have had, representatives of the minorities have urged most strongly on me the necessity of a clear assurance that full weight would be given to their views and to their interests in any modifications that may be contemplated. On that I need say no more than that over more than a decade ago at the three Round Table Conferences, and at the Joint Select Committee, His Majesty's Government consulted with and had the assistance or the advice of representatives of all parties and all interests in this country. It is unthinkable that we should now proceed to plan afresh or to modify in any respect any important part of India's future constitution without again taking counsel with those who have in the recent past been so closely associated in a like task with His Majesty's Government and with Parliament.

That some even more extensive scheme than I have mentioned, some even more widely phrased indication of the intentions of His Majesty's Government, is desired in certain quarters in this country, I am fully aware from the conversations I have had during these last few weeks. That that is a desire held with sincerity and that those who hold it are convinced that it is in the manner in question that the future progress and development of India and the expressed intentions of His Majesty's Government can best be fulfilled, I fully and readily accept. I would utter one word only of caution. And if I say that the situation must be faced in terms of world politics and of political realities in his country, I do so from no lack of sympathy and no lack of appreciation of the motives that weigh with the people of India and the ideals that appeal to them. But I would urge that it is essential in matters of

this nature, affecting the future of tens of millions of people, affecting the relations of the great communities, affecting the Princes of India, affecting the immense commercial and industrial enterprises, whether Indian or European, in this country, that the largest measure of agreement practicable should be achieved. With the best will in the world, progress must be conditioned by practical considerations. I am convinced myself, if I may say so with the utmost emphasis, that having regard to the extent of agreement which in fact exists in the constitutional field, and on this most difficult and important question of the nature of the arrangements to be made for expediting and facilitating the attainment by India of her full status, there is nothing to be gained by phrases which, widely and generally expressed, contemplate a state of things which is unlikely to stand at the present point of political development the test of practical application, or to result in that unified effort by all parties and all communities in India on the basis of which alone India can hope to go forward as one and to occupy the place to which her history and her destinies entitle her. I would ask that these words of caution be not taken as indicating any lack of sympathy on the part of His Majesty's Government for the aspirations of India, or any indifference to the pace of her advance; and I would repeat that His Majesty's Government are but concerned to use their best endeavours, now as in the past, to bring about that measure of agreement and understanding between all parties and all interests in this country which is so essential a condition of progress towards India's goal.

Largest
measure of
agreement
necessary
for constitu-
tional
progress

I turn now to the arrangements to be made to secure the association of public opinion in India with the conduct of the war. India's contribution has already been great, great to a degree which has impressed the imagination of the world. . . . I am of opinion that the right solution would be the establishment of a consultative group, representative of all

India's
contribution
to war

Association
of Indian
public
opinion
through 'a
consultative
group'

major political parties in British India and of the Indian Princes, over which the Governor-General would himself preside, which would be summoned at his invitation, and which would have as its object the association of public opinion in India with the conduct of the war and with questions relating to war activities.

How
'consulta-
tive group'
to be
selected

This group, for practical reasons, would inevitably be limited in size. But His Majesty's Government contemplate that it should be fully representative and in particular that its personnel should be drawn by the Governor-General from panels prepared by the various major political parties, from which a selection of individuals to attend meetings of the group would be made by the Governor-General. I hope in the very near future to enter into consultation with political leaders and with the Princes on this question. I have no doubt whatever that an arrangement of this nature will most materially contribute to associating the Indian States and British India with the steps which are being taken for the prosecution of the war and with the arrangements that are being made in that connection.

And I am confident, too, that in an association of this nature of representatives of all parties and all interests, there lies the germ of that fuller and broader association of all points of view in this country which contain in it the seeds of such advantage for the future of India as a whole.

II. Statement of Lord Zetland, Secretary of State, House of Lords, October 18, 1939.

If, at the end of the upheaval caused by the war, when the circumstances may well differ markedly from what they are to-day, there is a desire on the part of those concerned for modifications of particular features of the plan, then His Majesty's Government declare now that they will in such circumstances be very willing to enter into consultation

with representatives of the several communities, parties and interests in India and with Indian Princes with a view to securing their aid and co-operation in the framing of such modifications as may then seem desirable.

Modifica-
tion of Act
of 1935
after war,
if necessary

I say this because, in my view, it is not practicable, nor do I believe that it would be in the true interest of the people of India themselves, to endeavour, while we are all labouring under the strain and stress of a life-and-death struggle, to embark upon the task of immense complexity and one, moreover, which would inevitably give rise to no little controversy in India itself.

And that brings me back to . . . the root cause of the difficulties in the domain of constitution building in India. What we have to work for is elimination of those communal antagonisms which still militate against the political unity of India.

Communal
problem

You cannot abolish them by merely closing your eyes to their existence. You must face them and search for means to remove their underlying forces. I believe that the menace, which now confronts all of us, Englishmen, Hindus, Muslims, Princes and peoples alike, may aid us to achieve what hitherto has eluded our grasp. Can we not, standing shoulder to shoulder for a common purpose, be banded together in the comradeship of arms and learn to view in truer perspective against the background of the supreme and imminent peril—for what would it profit India if the forces of aggression and of evil emerged victorious from this war—those internal and domestic differences which have hitherto raised such formidable obstacles along the road to that goal towards which the peoples of both countries have determined to travel.

This then is my appeal to the peoples of India that in comradeship with us while presenting a united front to the forces ranged against us they strive after that agreement among themselves without which they will surely fail to achieve that unity,

Appeal to
"peoples"
of India

which is an essential of nationhood of which those with vision among her leaders have long dreamed and which must surely be the crowning achievement of long and intimate political relationship between the peoples of Great Britain and India.

14. MAHATMA GANDHI ON CONSTITUENT ASSEMBLY¹, 1939.

Value of
Constituent
Assembly

Pandit Jawaharlal Nehru has compelled me to study, among other things, the implications of a Constituent Assembly. When he first introduced it in the Congress resolutions, I reconciled myself to it because of my belief in his superior knowledge of the technicalities of democracy. But I was not free from scepticism. Hard facts have, however, made me a convert and, for that reason perhaps, more enthusiastic than Jawaharlal himself. For I seem to see in it a remedy, which Jawaharlal may not, for our communal and other distempers, besides being a vehicle for mass political and other education.

Adult
franchise

The more criticism I see of the scheme, the more enamoured I become of it. It will be the surest index to the popular feeling. It will bring out the best and the worst in us. Illiteracy does not worry me. I would plump for unadulterated adult franchise for both men and women, *i.e.*, I would put them all on the register of voters. It is open to them not to exercise it if they do not wish to. I would give separate vote to the Muslims; but, without giving separate vote, I would, though reluctantly, give reservation, if required, to every real minority according to its numerical strength.

"Separate
vote to
Muslims"
and
reservation
for "every
real
minority"

Thus the Constituent Assembly provides the easiest method of arriving at a just solution of the communal problem. To-day we are unable to say with mathematical precision who represents whom. Though the Congress is admittedly the oldest representative organisation on the widest scale, it is open

¹ November 19, 1939.

to political and semi-political organisations to question, as they do question, its overwhelmingly representative character. The Muslim League is undoubtedly the largest organisation representing Muslims, but several Muslim bodies—by no means all insignificant—deny its claim to represent them. But the Constituent Assembly will represent all communities in their exact proportion. Except it there is no other way of doing full justice to rival claims. Without it there can be no finality to communal and other claims.

Representation of all communities in exact proportion

Again the Constituent Assembly alone can produce a constitution indigenous to the country and truly and fully representing the will of the people. Undoubtedly such a constitution will not be ideal, but it will be real, however imperfect it may be in the estimation of the theorists or legal luminaries. Self-government to be self-government has merely to reflect the will of the people who are to govern themselves. If they are not prepared for it, they will make a hash of it. I can conceive the possibility of a people fitting themselves for right government through a series of wrong experiments, but I cannot conceive a people governing themselves rightly through a Government imposed from without, even as the fabled jackdaw could not walk like a peacock with feathers borrowed from his elegant companion. A diseased person has a prospect of getting well by personal effort. He cannot borrow health from others.

Wanted—
“constitution indigenous to the country”

* * * *

The principal hindrance is undoubtedly the British Government. If they can summon a Round Table Conference as they propose to do after the War, they can surely summon a Constituent Assembly subject to safeguards to the satisfaction of minorities. The expression ‘satisfaction of minorities’

British Government—
“principal hindrance”

"Satisfaction of minorities"

may be regarded as vague. It can be defined beforehand by agreement. The question thus resolves itself into whether the British Government desire to part with power and open a new chapter in their own history. I have already shown that the question of the Princes is a red herring across the path. European interests are absolutely safe so long as they are not in conflict with 'the interests of India.' I think this expression finds place in the Irwin-Gandhi Pact.

Look at the question from any standpoint you like, it will be found that the way to democratic Swaraj lies only through a properly constituted Assembly, call it by whatever name you like. All resources must, therefore, be exhausted to reach the Constituent Assembly before direct action is thought of. A stage may be reached when direct action may become the necessary prelude to the Constituent Assembly. That stage is not yet.

15. MR. JINNAH ON "DELIVERANCE DAY"¹, 1939.

I. Appeal for observance of "Deliverance Day," Bombay, December 2, 1939.

Instructions to League organisations

I wish the Mussalmans all over India to observe Friday, the 22nd December, as the "Day of Deliverance" and thanksgiving as a mark of relief that the Congress regime has at last ceased to function. I hope that the Provincial, District and Primary Muslim Leagues all over India will hold public meetings and pass the following resolution with such modifications as they may be advised, and after Jumma prayers offer prayers by way of thanksgiving for being delivered from the unjust Congress regime. I trust that all public meetings will be conducted in

¹ See Coupland, *The Constitutional Problem in India*. Part II, pp. 179-194; Rajendra Prasad, *India Divided*, pp. 146-152.

an orderly manner and with all sense of humility, and nothing should be done which will cause offence to any other community, because it is the High Command of the Congress that is primarily responsible for the wrongs that have been done to the Mussalmans and other minorities.

Resolution: "This public meeting of the Mussalmans of (*name of the place*) records its opinion that the Congress Ministry has conclusively demonstrated and proved the falsehood of the Congress claim that it represents all interests justly and fairly, by its decidedly anti-Muslim policy. It is the considered opinion of this meeting that the Congress Ministry has failed to safeguard the rights and interests of the Mussalmans and other minorities and interests.

Charges
against
Congress

"That the Congress Ministry both in the discharge of their duties of the administration and in the Legislatures have done their best to flout the Muslim opinion, to destroy Muslim culture, and have interfered with their religious and social life, and trampled upon their economic and political rights; that in matters of differences and disputes the Congress Ministry invariably have sided with, supported and advanced the cause of the Hindus in total disregard and to the prejudice of the Muslim interests.

Muslim
culture,
religion and
political
and economic rights
endangered

"The Congress Government constantly interfered with the legitimate and routine duties of District officers even in petty matters to the serious detriment of the Mussalmans, and thereby created an atmosphere that spread the belief amongst the Hindu public that there was established a Hindu *Raj*, and emboldened the Hindus, mostly Congressmen, to ill-treat Muslims at various places and interfere with their elementary rights of freedom. This meeting, therefore, expresses its deep sense of relief at the termination of the Congress regime in various Provinces and rejoices in observing this day as the "Day of Deliverance" from tyranny, oppression and injustice during the last two and a half years, and prays to God to grant such strength, discipline and

Hindu Raj
established

organisation to Muslim India as to successfully prevent the advent of such a Ministry again and to establish a truly popular Ministry which would do even justice to all communities and interests.

Appeal to
Governors

"This meeting urges upon His Excellency the Governor of (*name of the Province*) and his Council of Advisors to enquire into the legitimate grievances of the Mussalmans and the wrongs done to them by the outgoing Congress Ministry, and redress the same at the earliest moment in accordance with the announcements that have been made by the Governors in taking over the government of various Provinces under Section 93 of the Government of India Act, 1935, and thus assure people that the new regime stands for even justice to all communities and interests concerned."

II. Statement on "Deliverance Day"

A great deal of unnecessary controversy has arisen over my appeal to Muslims to celebrate December 22 as a "Day of Deliverance" from oppression and, since the guilty do not admit their guilt and public memory is short, I consider it advisable to briefly trace the events that led to the reasons that prompted this appeal.

(1) *Bande
Mataram*
(2) Con-
gress Flag
(3) Urdu

To commence with, the suggested resolution says nothing more or less than has been said on many previous occasions. The very first complaint against Congress rule was made by me very shortly after they took office and, in my speech at the Lucknow session of the Muslim League, 1937, I complained against the compulsory singing of the *Bande Mataram*, the question of the Congress Flag, and the supplanting of Urdu by Hindi and even then I called upon the Governors to exercise their special powers.

Pirpur
Report

From then onwards the Congress caucus, like the proverbial steam-roller, gathered speed and complaints of oppression began to pour into the central

office. These became so numerous that the Council decided to appoint, in March, 1938, the Pirpur Committee which, after an elaborate and painstaking investigation over all the Congress provinces, submitted its report at the Patna Session in December 1938.

The following resolution was there passed at a full session:

Patna
resolution,
1938

"That having regard to the atrocities that have been committed and that elementary rights of the Muslims have been trampled upon in a systematic manner in Bihar, U.P. and C.P., and that the Governors of these Provinces have failed to redress their grievances or protect even the elementary rights of the Mussalmans in these provinces in spite of all constitutional methods adopted so far by the Muslims, this session of the All-India Muslim League is, therefore, of opinion that the time has come to authorise the Working Committee of the All-India Muslim League to decide and resort to 'Direct Action' if and when necessary."

Plan for
'Direct
Action'.

During this time, in order to prevent 'Direct Action' being resorted to, I was repeatedly urging both Governors and the Governor-General, in person or by correspondence, to exercise their special powers and to take executive action to safeguard the rights and interests of the minorities placed by the Constitution under their protection, and it was only on the 17th April, 1939, that the Viceroy intimated that he would take up the matter.

Demand for
exercise of
special
powers by
Governors
and
Governor-
General

As regards the Congress Ministries, our complaints were dismissed as false, frivolous and vexatious, and even Mr. Gandhi, before whom we placed our charges as far back as May, 1938, side-tracked the question by writing, "I believe Congress Committees have been advised to avoid as far as possible all occasions of friction over *Bande Mataram* and the Flag. . . ."

No response
from
Congress

Vidya
Mandir
Scheme

With no redress, Muslims in certain provinces grew restive and in the C.P., ignoring the Working Committee altogether, resorted to 'Direct Action' over the Vidya Mandir Scheme.

Question of
'Direct
Action'

I may state here that at no stage did the Working Committee favour or encourage 'Direct Action' and on request being received from Bihar, in July, 1939, for permission to launch 'Direct Action', the Working Committee instructed the Bihar Muslim League to place the whole case before the Governor-General, the Governor and the Prime Minister and to report later the result of their representation. Similar advice was given to the other Muslim Leagues who contemplated similar measures.

Delhi
resolution,
1939

Complaints, however, continued to pour in and on the 27th August, 1939, the Council of the League at Delhi passed the following resolution:—

Criticism
of 1935
Act

"Resolved that this Council, while deploring the policy of the British Government towards the Muslims of India by attempting to force upon them against their will a constitution and in particular the Federal Scheme, as embodied in the Government of India Act, 1935, which allows a permanent hostile communal majority to trample upon their religious, political, social and economic rights, and the utter neglect and indifference shown by the Viceroy and the Governors in the Congress-governed Provinces in exercising their special powers to protect and secure justice to the minorities. . . ."

Viceroy's
intervention

In September, war was declared and on the 17th of that month, the Working Committee reaffirmed the above resolution as one of the fundamental conditions of Muslim support and the Viceroy, realising the gravity of the situation, pressed Mr. Gandhi and the Congress leaders to come to an agreement with the Muslim League in the Provincial sphere on a coalition basis for at least the duration of the war.

Consequently Babu Rajendra Prasad wrote on the 5th October that the Congress was prepared to request Sir Maurice Gwyer¹ or some other suitable person to investigate only any specific charges which the Muslim League might formulate against the Ministries of the Congress-governed Provinces.

Rajendra
Prasad's
offer

I considered this proposal unsound and unpractical for the following reasons. First, legally and constitutionally the Congress Working Committee has no place or power in the constitution. Secondly, the complaints of the Muslims and other minorities were directed against the Governments of certain Provinces who were responsible to the Legislatures and the electorates and not to the Working Committee. Thirdly, the proposed resolution of the Working Committee could not confer upon the contemplated tribunal the necessary power to summon witnesses and administer oaths, nor could the tribunal compel the production of documents that might be required, and, finally, I wished to know to whom the tribunal was to report and who would be the final authority to take action, if any, against the Ministries.

Grounds of
rejecting
Rajendra
Prasad's
offer

If this final authority was the Working Committee, I pointed out that, in my opinion it was the Working Committee itself that was primarily responsible for the injustices and the wrongs committed and I also could not believe that any adequate action would be taken against the Ministries in view of the fact that the Working Committee had already decided that the Muslim League's charges were false and unfounded.

I also informed Babu Rajendra Prasad that I had already placed the whole matter before the Governor-General and had requested him to take executive action without delay to safeguard the interests of and to secure justice for the minorities.

¹ Chief Justice of the Federal Court.

Nature of
appeal to
Governors
and
Governor-
General

I must explain at this stage that I have never asked either the Governor-General or the Governors to act as a judicial tribunal as is suggested in Mr. Gandhi's appeal to me. What I asked them to do was to take executive action to redress our grievances, and, by intervention, to secure justice and fairplay.

* * * *

However, just after my letter to Babu Rajendra Prasad the Congress Ministries resigned to the very natural relief of the Muslims and other minorities, and I immediately decided to appeal for the observance of a day to express our relief and to show its intensity in a manner that would force ears that had hitherto been deaf to listen to us. I might point out that if our appeals had been heard at the proper time, no such action on our part would now be necessary.

Reply to
criticism
of appeal
for obser-
vance of
"Deliver-
ance Day"

This appeal has been variously described as ill-timed, provocative and anti-national and that the Muslims are asked to gloat over the departure of an elected Government and to welcome an official administration.

* * * *

As regards provocation, let me point out the words of my appeal: "I trust that all public meetings will be conducted in an orderly manner, with due sense of humility and nothing should be done which will cause offence to any community. . . ." However, to make quite clear my insistence that the day is observed in such spirit, I again state that I look to all District and Primary Leagues to ensure that the meetings are held in that spirit. Let there be no *hartals*, processions or any such demonstrations, but let a spirit of humility and a mood of reflection prevail. There is relief and gratitude in our hearts; not joy or triumph.

Thirdly, it is extremely unfair and unjust to contend that the Muslims welcome the present

administration. It is true that we urge upon them to enquire into our grievances and to redress them, but this is only because it is in their power to do so. On the other hand, my appeal emphasizes that prayers should be offered for the establishment of truly popular Ministries which would do even justice to all communities and interests.

But there is one statement on my appeal that I cannot let pass coming as it does from such an authoritative source as the Chairman of the Congress Parliamentary Committee¹. I am told that all our charges are totally false and unwarranted, and that was to be expected, but I must take notice of his declaration:

"Furthermore, every Premier at my instance had invited his Governor unhesitatingly to intervene in matters affecting the rights and interests of the minorities whenever the Governor felt that the action of the Ministry was not correct. When Mr. Jinnah recently made the charges I again instructed every Premier to invite his Governor's attention to them as they also affected him and I was informed that the Governors considered the charges unwarranted."

Sardar
Patel on
Muslim
grievances
against
Congress
Ministries

The above statement raises a very grave issue, for it makes the Governors accessories after the fact. Let me inform Mr. Vallabhbhai Patel that we have overwhelming evidence in support of our cause and far from shirking an inquiry, as is suggested, I insist that a thorough enquiry should now be made by a properly constituted tribunal invested with all necessary powers, and I now ask that a Royal Commission be appointed by the British Government, of a purely judicial personnel and composed of judges of His Majesty's High Courts and under the chairmanship of one of the Law Lords of the Privy Council.

Reply to
Sardar
Patel

Wanted—
Royal
Commission
composed
of judges

¹ Sardar Vallabhbhai Patel.

16. MR. JINNAH ON CONSTITUENT ASSEMBLY, 1939-40.

I. Reply to Mahatma Gandhi, December 14, 1939.

Criticism of
Mahatma
Gandhi

Suddenly Mr. Gandhi, who was always sceptical about the Constituent Assembly, has now become an enthusiastic convert and its champion. He has been misrepresenting and insinuating motives to the Muslim League recently—for instance, that the League is an obstacle to the progress of the country and is out to sell itself to the highest bidder—in his periodical articles published in the *Harijan*. . . .

But his interview to the *News Chronicle*¹ is for the consumption of the British public. A more disingenuous statement it would be difficult to find, coming from Mr. Gandhi, and it is a pity it comes from one who is a votary of truth. His sudden affection for the Constituent Assembly is on a par with what he has striven for for two decades.

Mahatma
Gandhi's
view on
methods of
ascertaining
the people's
views

"The opinion that counts is Indian opinion, not even the Congress opinion. India's opinion can be ascertained by the free vote of the people. The only true and democratic method is to ascertain their will through adult suffrage, or any agreed equivalent."

The first question will be when he says, "any agreed equivalent to adult suffrage"; between whom is that agreement to be arrived at? Secondly, if Britain is not to depend on Muslim, Hindu or any other opinion, not even Congress opinion, then what is India's opinion?

Constitu-
ent Assem-
bly "will
mean a
second and
larger
edition of
the Con-
gress".

Now that the Congress stands exposed, that it does not represent India and that it is really a Hindu body, Mr. Gandhi is pleased suddenly to stand for a Constituent Assembly, which, in the present condition of India, will mean a second and larger edition of the Congress.

¹ See Document No. 11. Mahatma Gandhi's statement on Constituent Assembly was published in *News Chronicle*.

Having brushed aside the Indian Princes, ignoring their existence altogether, he (Mr. Gandhi) proceeds to lay down a most extraordinary proposition. "I fail to see", he says, "why Britain's intention about India should be dependent upon Muslim, Hindu or any other opinion".

Problem
of States

Mr. Gandhi then proceeds to say, "So far as the Congress is concerned, the people of the Indian States should be represented precisely on the same footing as those of British India." Who will arrange that? And how are electorates to be established there? And what is to happen to the Treaty Rights and relationship between the British Government and the Indian Princes?

Then he proceeds, "Muslims and other accepted minorities may be represented by separate electorates, if necessary". This is a concession, but there is no grace in it when he further proceeds to state that it should be done in exact proportion to their numbers. He knows perfectly well that they will be in a hopeless minority in the Constituent Assembly of Mr. Gandhi's conception, where he hopes to get a brute majority against the Muslims, including other minorities.

Minorities

"Brute
majority"

He makes a further concession that "they will determine what is required for their protection." Is the Constituent Assembly to be bound by the minority vote as to what is required for their protection and for each minority? And then comes the omnibus clause, which is fundamentally wrong and once more shows blind arrogance, when he says that in all matters of common interest the composite majority decision should prevail. Therefore, the Muslims and other minorities will have to submit to the verdict of the Assembly as to the nature, character and the form of the future constitution of India, which will presumably be dictated by Mr. Gandhi on behalf of the Congress, as for instance, Muslims and other minorities may prefer a bicameral

"Blind
arrogance"

Legislature, whereas the Congress-controlled majority of the Assembly may decide against it, which, according to Mr. Gandhi, will be final.

Why a real
Constituent
Assembly
cannot
be estab-
lished in
India

But evidently his new-born faith in the Constituent Assembly is getting shaken a bit already, because he says if a better way than the Constituent Assembly could be found "for knowing the will of the people, so far as I know, the Congress will accept it without hesitation." Mr. Gandhi is neither concerned with the size of the country nor the illiteracy of the masses. A truly representative assembly presupposes that in order faithfully to express the judgment of the people it can only be constituted if you have a fully developed public opinion, an electorate educated and experienced, free from superstition and capable of judging the vital political issues affecting the country, and not as India stands to-day, composed of castes, creeds, superstitions and provincial jealousies, quite apart from the main division of British India and the Indian States.

Consti-
tuent
Assembly
will be "a
packed
body
manœuvred
and mana-
ged by the
Congress
caucus".

The Assembly proposed by Mr. Gandhi would at best, therefore, be a packed body manoeuvred and managed by the Congress caucus. It is surprising when Mr. Gandhi complacently says that an election campaign will itself be a sufficient education for the purpose of broadly knowing the popular will. But have we had sufficient evidence, under the present Constitution, though in smaller and more informed electorates? And what about the experience of the Congress (with its four-anna franchise) of abuses of power and malpractices which were eloquently condemned by Mr. Gandhi himself? It will not be the "popular will" as Mr. Gandhi professes, but it will be the will of one community, which is in an overwhelming majority.

* * * *

Mr. Gandhi's notion of justice is to follow what he advises, then alone it can be just. I am constrained to say I wish Mr. Gandhi will stop airing

views which change from day to day and week to week and which consistently perpetuate inconsistencies, and apply his mind to the only and one question, namely, settling the Hindu-Muslim question, as he, of all the Congress leaders, is best fitted to represent the Hindus as such and he can deliver the goods on behalf of the Hindus and bring about complete adjustment between the two major communities and the rest will follow. I need hardly reiterate that I am willing to help to the utmost of my power on behalf of the Muslims towards an honourable solution.

Gandhiji
"best fitted
to represent
the
Hindus"

Apart from this academic discussion about a Constituent Assembly, it shows colossal ignorance, both historical and constitutional, to expect a foreign power that is dominating this country to sign its death warrant. The Constituent Assembly can only be real when it has got the sovereign authority of the people behind it, forged by the people, and who are in a position to convene such a supreme national body whose decisions and verdict could be respected and honoured and whose fiat and writs could be enforced. It is puerile to ask the British Government, in the first instance, to call a Constituent Assembly of another nation and afterwards have the honour and privilege of placing the constitution framed by this supreme assembly of India on the Statute Book of the British Parliament.

A foreign
Power
cannot
summon a
Constituent
Assembly.

II. Article in "Time and Tide," London, January 19, 1940.

. . . Is it their (i.e., the British people) desire that India should become a totalitarian Hindu State with the Central and all the Provincial Governments responsible not to their Legislatures or to the electorate but to a caucus unknown to the constitution, the Working Committee of the Congress? They may rest assured that such will be the inevitable result if the Congress demand for the right of fram-

Constituent
Assembly
will ensure
Congress
rule.

ing India's constitution through a Constituent Assembly is conceded.

"Muslim India" will resist Congress rule.

Let us consider briefly the implications of this nebulous and impracticable Constituent Assembly. To commence with, the question arises why is this demand made at this particular time? The answer is obvious. The War is to the Working Committee a heaven-sent means of increasing its rule from over eight provinces to over the whole of India, States and Provinces. If the British Government are stampered and fall into the trap under the stress of the critical situation created by the War, India will face a crisis the result of which no man could prophesy, and I feel certain that Muslim India will never submit to such a position and will be forced to resist it with every means in their power.

Representatives of illiterate Hindus will be dominated by Congress.

And of what type of constitutionalists will this constituent assembly consist? There are in India roughly 400,000,000 souls who, through no fault of their own, are hopelessly illiterate and consequently priest and caste-ridden. They have no real conception of how they are being governed even to-day and it is proposed that to the elected representatives of such should India's future constitution be entrusted. Is it too much to say that, since the vast majority of the elected representatives will be illiterate Hindus, the Constituent Assembly will be under the influence of Mr. Gandhi and the Congress leaders and the constitution that will emerge will be as the Working Committee direct?

Thus, through the Constituent Assembly, will the Working Committee attain its ends. British control and commerce will disappear; the Indian States will be abolished; minority opposition will be stifled and a great Hindu nation will emerge governed by its beloved leader, Mr. Gandhi, and the Congress Working Committee.

* * * *

"Two nations" in India

To conclude, a constitution must be evolved that recognises that there are in India two nations who

both must share the governance of their common motherland. . . .

17. PAKISTAN RESOLUTION, 1940.

I. Mr. Jinnah's Presidential Speech, Muslim League, Lahore Session, March, 1940.

Now, what is our position with regard to the future constitution? It is that, as soon as circumstances permit or immediately after the war at the latest, the whole problem of India's future constitution must be examined *de novo* and the Act of 1935 must go once for all. We do not believe in asking the British Government to make declarations. These declarations are really of no use. You cannot possibly succeed in getting the British Government out of this country by asking them to make declarations.

Revision of
Constitu-
tion after
War

* * *

The problem in India is not of an inter-communal character but manifestly of an international one, and it must be treated as such . . . the only course open to us all is to allow the major nations separate homelands by dividing India into 'autonomous national States'. There is no reason why these States should be antagonistic to each other. On the other hand the rivalry and the natural desire and efforts on the part of one to dominate the social order and establish political supremacy over the other in the government of the country will disappear. It will lead more towards natural goodwill by international pacts between them, and they can live in complete harmony with their neighbours. This will lead further to a friendly settlement all the more easily with regard to minorities by reciprocal arrangements and adjustments between Muslim India and Hindu India, which will far more adequately and effectively safeguard the rights and interests of Muslims and various other minorities.

Divide
India into
"auto-
nomous
national
States".

It is extremely difficult for us to appreciate why our Hindu friends fail to understand the real nature

Hinduism
and
Islam
are
"different
and dis-
tinct social
orders".

"Miscon-
ception of
one Indian
nation"

Two nations
in a single
State
will mean
"final
destruction"
of Central
Govern-
ment.

of Islam and Hinduism. They are not religions in the strict sense of the word, but are, in fact, different and distinct social orders, and it is a dream that the Hindus and the Muslims can ever evolve a common nationality¹, and this misconception of one Indian nation has gone far beyond the limits and is the cause of most of our troubles and will lead India to destruction if we fail to revise our notions in time. The Hindus and the Muslims belong to two different religious philosophies, social customs, literatures². They neither intermarry nor interdine together, and, indeed, they belong to two different civilisations which are based mainly on conflicting ideas and conceptions. Their concepts on life and of life are different. It is quite clear that Hindus and Mussal-
mans derive their inspiration from different sources of history. They have different epics, different heroes, and different episodes. Very often the hero of one is a foe of the other, and, likewise, their vic-
tories and defeats overlap. To yoke together two such nations under a single State, one as a numerical minority and the other as a majority, must lead to growing discontent and final destruction of any fabric that may be so built up for the government of such a State.

. . . under the plea of unity of India and one nation, which does not exist, it is sought to pursue here the line of one Central Government, when we

¹ Sir Syed Ahmed once addressed his co-religionists as follows: "Do you not inhabit the same land?....Remember that the words Hindu and Mahommedan are only meant for religious distinction— otherwise all persons, whether Hindu or Mahomedan, even the Christians who reside in this country, are all in the particular respect belonging to one and the same nation."

² Speaking on the Indian Councils Bill, 1909, in the House of Lords on March 4, 1909, Lord Morley, Secretary of State for India, observed, "....let us not forget that the difference between Mahommedanism and Hinduism is not a mere difference of articles of religious faith. It is a difference in life, in tradition, in history, in all the social things as well as articles of belief that constitute a community...."

know that the history of the last 1200 years has failed to achieve unity and has witnessed, during the ages, India always divided into Hindu India and Muslim India. The present artificial unity of India dates back only to the British conquest and is maintained by the British bayonet, but the termination of the British regime . . . will be the herald of the entire break-up with worse disaster than has ever taken place during the last 1000 years under Muslims. . . .

"Artificial unity" created by British regime

Muslim India cannot accept any constitution which must necessarily result in a Hindu-majority Government. Hindus and Muslims brought together under a democratic system forced upon the minorities can only mean Hindu *Raj*. Democracy of the kind with which the Congress High Command is enamoured would mean the complete destruction of what is most precious in Islam¹ . . .

Hindu *Raj* means "complete destruction of what is most precious in Islam".

Mussalmans are not a minority as it is commonly known and understood . . . Mussalmans are a nation according to any definition of a nation, and they must have their homelands, their territory and their State . . . We wish our people to develop to the fullest our spiritual, cultural, economic, social and political life in a way that we think best and in consonance with our own ideals and according to the genius of our people . . .

Muslims: not a minority but a nation.

¹ In 1939 Mr. Jinnah made a statement on the question of democracy in India, in which he observed, "The Muslims have always had their fears and apprehensions of even a representative form of government, and far more of democracy in its strict application to India. Since the time of the Minto-Morley Reforms and the historical Lucknow Pact between Hindus and Muslims in 1916, their insistence on separate electorates, weightage and statutory safeguards have been a clear indication of those fears. But, since the inauguration of the new Provincial Constitutions, it has been established beyond doubt, particularly by the way in which the Congress High Command has persisted in its policies and programmes, that the sole aim and object of the Congress is to annihilate every other organisation in the country, and to

Jinnah on "democratic Parliamentary Government in India"

II. Resolution of Muslim League, Lahore Session, March 23, 1940.

"Independent States"
for
Muslims

Resolved that it is the considered view of this session of the All-India Muslim League that no constitutional scheme would be workable in this country or acceptable to the Muslims unless it is designed on the following basic principle, *viz.*, that geographically contiguous units are demarcated into regions which should be so constituted, with such territorial readjustments as may be necessary, that the areas in which the Muslims are numerically in a majority, as in the north-western and eastern zones of India, should be grouped to constitute 'Independent States' in which the constituent units shall be autonomous and sovereign.

Safeguards
for minor-
ities

That adequate, effective and mandatory safeguards should be specifically provided in the constitution for minorities in these units and in the regions for the protection of their religious, cultural, economic, political, administrative and other rights and interests in consultation with them; and in other parts of India where the Mussalmans are in a minority, adequate, effective and mandatory safeguards shall be specifically provided in the constitution for them and other minorities for the protection of their religious, cultural, economic, political, administrative and other rights and interests in consultation with them.

III. Mr. Jinnah on Lahore Resolution, 1940.

In the first place, a wrong idea and false propaganda appear to be set in motion in order to frighten

set itself up as a Fascist and authoritarian organisation of the worst type. Having regard to the 35 millions of voters the bulk of whom are totally ignorant, illiterate and untutored, living in the centuries-old superstitions of the worst type, thoroughly antagonistic to each other, culturally and socially, the working of the Constitution has clearly brought out that it is impossible to work a democratic Parliamentary Government in India".

the Muslim minorities that they would have to migrate *en bloc* and wholesale. I wish to assure my Muslim brethren that there is no justification for this insidious misrepresentation. Exchange of population, however, on the physical division of India as far as practicable will have to be considered. Secondly, the Muslim minorities are wrongly made to believe that they would be worse off and be left in the lurch in any scheme of partition or division of India. I may explain that the Mussalmans, wherever they are in a minority, cannot improve their position under a united India or under one Central Government. Whatever happens, they would remain a minority. They can rightly demand all the safeguards that are known to any civilised Government to the utmost extent. But by coming in the way of the division of India they do not and cannot improve their own position. On the other hand they can, by their attitude of obstruction, bring the Muslim homeland and 60,000,000 of the Mussalmans under one Government, where they would remain no more than a minority in perpetuity.

"Exchange of population... will have to be considered."

Muslims in Hindu-majority Provinces should not oppose partition.

It was because of the realisation of this fact that the Mussalman minorities in Hindu India readily supported the Lahore resolution. The question for the Muslim minorities in Hindu India is whether the entire Muslim India of 90,000,000 should be subjected to a Hindu majority *Raj* or whether at least the 60,000,000 of Mussalmans residing in the areas where they form a majority should have their own homeland and thereby have an opportunity to develop their spiritual, cultural, economic and political life in accordance with their own genius and shape their own future destiny, at the same time allowing Hindus and others to do likewise. Similar will be the position of the Hindus and other minorities in the Muslim homelands.

Should "entire Muslim India" be "subjected to the Hindu majority Raj"?

In my opinion, after the present tension created by the ambition of one community dominating over the other and establishing supremacy over all the

Responsibility of the majority after partition

rest is eased, we shall find better understanding and good will created all around. The division of India will throw a great responsibility upon the majority in its respective zones to create a real sense of security amongst the minorities and win their complete trust and confidence.

18. EXPANSION OF EXECUTIVE COUNCIL, 1940-41

I. Statement of Lord Linlithgow, August 8, 1940.

Last October His Majesty's Government again made it clear that Dominion Status was their objective in India. They added that they were ready to authorize the expansion of the Governor-General's Council to include a certain number of representatives of political parties, and they proposed the establishment of a Consultative Committee. . . .

* * * *

. . . They have authorized me . . . to invite a certain number of representative Indians to join my Executive Council. They have authorized me further to establish a War Advisory Council . . . which would contain representatives of the Indian States, and of other interests in the national life of India as a whole.

Expansion of Executive Council and creation of War Advisory Council

. . . there is still in certain quarters doubt as to the intentions of His Majesty's Government for the constitutional future of India, and . . . there is doubt, too, as to whether the position of minorities, whether political or religious, is sufficiently safeguarded in relation to any constitutional change by the assurances already given . . . On those two points His Majesty's Government now desire me to make their position clear.

Doubts as to British intentions

The first is as to the position of minorities in relation to any future constitutional scheme . . . they (*i.e.*, His Majesty's Government) could not contemplate the transfer of their present responsibilities for the peace and welfare of India to any system

of government whose authority is directly denied by large and powerful elements in India's national life. Nor could they be parties to the coercion of such elements into submission to such a Government.

Minorities
not to be
coerced

The second point of general interest is the machinery for building within the British Commonwealth of Nations a new constitutional scheme when the time comes. There has been very strong insistence that the framing of that scheme should be primarily the responsibility of Indians themselves, and should originate from Indian conceptions of the social, economic and political structure of Indian life. His Majesty's Government are in sympathy with that desire, and wish to see it given the fullest practical expression subject to the due fulfilment of the obligations which Great Britain's long connection with India has imposed upon her and for which His Majesty's Government cannot divest themselves of responsibility.

Constituent
Assembly

It is clear that a moment when the Commonwealth is engaged in a struggle for existence is not one in which fundamental constitutional issues can be decisively resolved. But His Majesty's Government authorise me to declare that they will most readily assent to the setting up after the conclusion of the war with the least possible delay of a body representative of the principal elements in India's national life in order to devise the framework of the new constitution and they will lend every aid in their power to hasten decisions on all relevant matters to the utmost degree.

Constitu-
tion-
making
after war

II. Speech of Lord Linlithgow, Calcutta, December 15, 1941.

. . . That reorganization¹ (i.e., expansion of the Executive Council in July, 1941) did not have any

¹ The Congress rejected the Viceroy's offer in August, 1940. By a communiqué dated July 22, 1941, the number of

Expansion
of Executive
Council
based on
"adminis-
trative
conveni-
ence"

basis other than administrative convenience. But in making it, though I could not look for help from the political parties, I was anxious that I should get the best men I could, the most representative men, men of real standing and importance in this country. In that I can claim to have succeeded . . . the process of expansion, the fact that as part of it there disappeared the European and the official majorities that had been the characteristics of that body for so many years, the transfer to non-official gentlemen of the highest standing and reputation in this country of great departments of State, with joint responsibility for all the business that comes before the Governor General in Council, was a step the significance of which is far greater than I sometimes think is realised. Its immediate importance is great. On the long-term view it is likely to prove to be even greater.

19. THE CRIPPS PROPOSALS, 1942.

I. Declaration of British Government¹, March 11, 1942.

Object:
full Domi-
nion Status
for India

His Majesty's Government, having considered the anxieties expressed in this country and in India as to the fulfilment of promises made in regard to the future of India, have decided to lay down in precise and clear terms the steps which they propose shall be taken for the earliest possible realization of self-government in India. The object is the creation of a new Indian Union which shall cons-

members of the Executive Council was increased from 7 to 12. In the new Council the number of Indian members was 8 and they were in a majority of 2 to 1. The Secretary of State for India described this expansion as 'a change not indeed in the form of the constitution but in its spirit'. By a Press Note dated July 3, 1942, it was announced that membership of the Executive Council had been increased from 12 to 15, with 11 non-official Indians, 1 non-official European and 3 European officials (including the Commander-in-Chief).

¹ This declaration was the basis of discussion between Sir Stafford Cripps and the Indian leaders.

titute a Dominion associated with the United Kingdom and other Dominions by a common allegiance to the Crown, but equal to them in every respect, in no way subordinate in any aspect of its domestic and external affairs.

(His Majesty's Government therefore make the following declaration:)

(a) Immediately upon cessation of hostilities, steps shall be taken to set up in India, in the manner described hereafter, an elected body charged with the task of framing a new constitution for India.

New constitution to be framed by an elected "constitution-making body"

(b) Provision shall be made, as set out below, for participation of Indian States in the constitution-making body.

(c) His Majesty's Government undertake to accept and implement forthwith the constitution so framed subject only to:

(i) the right of any province of British India that is not prepared to accept the new constitution to retain its present constitutional position, provision being made for its subsequent accession if it so decides. With such non-acceding provinces, should they so desire, His Majesty's Government will be prepared to agree upon a new constitution, giving them the same full status as the Indian Union and arrived at by a procedure analogous to that here laid down.

Possibility of partition of India recognised

(ii) the signing of a treaty which shall be negotiated between His Majesty's Government and the constitution-making body. This treaty will cover all necessary matters arising out of the complete transfer of responsibility from British to Indian hands; it will make provision, in accordance with the undertakings given by His Majesty's Government, for the protection of racial and religious minorities; but will not impose any restriction on the power of the Indian Union to decide in future its relationship to other member States of the British Commonwealth.

Future relation between India and Britain

(iii) Whether or not an Indian State elects to adhere to the constitution, it will be necessary to negotiate a revision of its treaty arrangements, so far as this may be required in the new situation.

(d) The constitution-making body shall be composed as follows, unless the leaders of Indian opinion in the principal communities agree upon some other form before the end of hostilities:

*Composition of
"constitution-making"
body

Immediately upon the result being known of provincial elections which will be necessary at the end of hostilities, the entire membership of the Lower Houses of the Provincial Legislatures shall as a single electoral college proceed to the election of the constitution-making body by the system of proportional representation. This new body shall be in number about one-tenth of the number of the electoral college.

Indian States shall be invited to appoint representatives in the same proportion to their total population as in the case of representatives of British India as a whole and with the same powers as British Indian members.

Interim
arrangement
for India's
participation
in war
effort

(e) During the critical period which now faces India and until the new constitution can be framed His Majesty's Government must inevitably bear the responsibility for and retain the control and direction of the defence of India as part of their world war effort, but the task of organizing to the full the military, moral and material resources of India must be the responsibility of the Government of India with the co-operation of the peoples of India. His Majesty's Government desire and invite the immediate and effective participation of the leaders of the principal sections of the Indian people in the counsels of their country, of the Commonwealth and of the United Nations. Thus they will be enabled to give their active and constructive help in the discharge of a task which is vital and essential for the future freedom of India.

II. Broadcast by Sir Stafford Cripps, Delhi, March 30, 1942.

First of all you will want to know what object we had in view. Well, we wanted to make it quite clear and beyond any possibility of doubt or question that the British Government and the British people desire the Indian peoples to have full self-government, with a constitution as free in every respect as our own in Great Britain or as of any of the great Dominion members of the British Commonwealth of Nations. . . .

Britain's
object:
full
Dominion
Status
for India

There is, however, an existing constitution which regulates the Central and Provincial Governments of India and everyone agrees that in these troublous times we cannot here and now set about forging a new constitution. It is far too important a matter for the future of India to be improvised in a hurried way.

Constitu-
tion-making
not possible
during
war

The principle on which these proposals are based is that the new constitution should be framed by the elected representatives of the Indian people themselves. So we propose that immediately hostilities are ended, a constitution-making body should be set up consisting of elected representatives from British India, and if the Indian States wish, as we hope they will, to become part of the new Indian Union, they too will be invited to send their representatives to this constitution-making body, though, if they do, that will not, of itself, bind them to become members of the Union. That is the broad outline of the future.

Participa-
tion of
States
in constitu-
tion-making

Now what is to happen in the meantime ?

The British people are determined to do their utmost for the defence of India and we are confident that, in that great task, the Indian peoples of all races and religions are eager to play their full part.

So much for the general framework of the proposals. But, as we all know, the most vital and

difficult question is that which concerns the interests of the various communities amongst the Indian peoples.

"Interests
of the
various
commu-
nities"

I will not attempt to go into any of the historical origins of these difficulties; let us instead look at them as a present fact. In the great subcontinent of India there is more than one people, there are many peoples and races as there are in the great sub-continent of Russia. Our object is to give to the Indian peoples full self-government with complete freedom as to how they will devise and organize their own constitution.

Disputes
about form
of future
Constitu-
tion

There are those who claim that India should form a single united country: there are others who say it should be divided up into two, three or more separate countries. There are those who claim that provincial autonomy should be very wide with but few centrally controlled federal services; others stress the need for centralization in view of the growing complexity of economic development.

These and many other and various ideas are worthy to be explored and debated, but it is for the Indian peoples, and not for any outside authority, to decide under which of these forms India will in the future govern herself.

India, not
any "outside
authority",
to decide
upon form
of Constitu-
tion

If the Indian peoples ask our help, it will, of course, be gladly given, but it is for you, the Indian peoples, to discuss and decide upon your future constitution. We shall look on with deep interest and hope that your wisdom will guide you truly in this great adventure.

We ask you, therefore, to come together—all religions and races—in a constitution-making body as soon as hostilities are over to frame your own constitution.

We have specified the form which that body will take, unless, and this is an important point, the leaders of the principal sections of Indian opinion

agree between themselves before the end of hostilities upon some other and better form.

That constitution-making body will have as its object the framing of a single constitution for the whole of India—that is, of British India, together with such of the Indian States as may decide to join in.

But we realize this very simple fact: If you want to persuade a number of people who are inclined to be antagonistic to enter the same room, it is unwise to tell them that once they go in there is no way out—they are to be for ever locked in together. It is much wiser to tell them they can go in and if they find that they can't come to a common decision, then there is nothing to prevent those who wish from leaving again by another door. They are much more likely all to go in if they have knowledge that they can by their free will go out again if they cannot agree.

Justification
of provision
for non-
accession of
Provinces

Well, that is what we say to the provinces of India. Come together to frame a common constitution—if you find after all your discussion and all the give and take of a constitution-making assembly that you cannot overcome your differences and that some provinces are still not satisfied with the constitution, then such provinces can go out and remain out if they wish and just the same degree of self-government and freedom will be available for them as for the Union itself, that is to say complete self-government.

We hope and expect to see an Indian Union strong and united because it is founded upon the free consent of all its peoples, but it is not for us, Britishers, to dictate to you, the Indian peoples. You will work out and decide that problem for yourselves.

So we provide the means and the road by which you can attain that form of the absolute and united

Granting
of freedom
not to be
delayed by
communal
differences

self-government that you desire at the earliest possible moment. In the past we have waited for the different Indian communities to come to a common decision as to how a new constitution for a self-governing India should be framed and, because there has been no agreement amongst the Indian leaders, the British Government has been accused by some of using this fact to delay the granting of freedom to India. We are now giving the lead that has been asked for and it is in the hands of Indians and Indians only whether they will accept that lead and so attain their own freedom. If they fail to accept this opportunity the responsibility for the failure must rest with them.

* * * *

Provision
for protec-
tion of
rights of
minorities

As regards the position of minority communities within the new Indian Union, I am confident that the constitution-making body will make just provision for their protection. But in view of the undertakings given to these minorities by His Majesty's Government in the past we propose that in the Treaty, which, under the draft Declaration, will be concluded between His Majesty's Government and the constitution-making body, the new Indian Union should undertake to protect the rights of these minorities. If there should be any non-acceding provinces a similar treaty provision would be made in respect of minority communities within their borders.

* * * *

It¹ contains one essential reservation—that in respect of the responsibility for Defence. This reservation does not mean that the Governor-General and his Executive Council will or indeed could be excluded from taking an effective share in the councils for the defence of India. In this wide-flung war,

¹ This refers to the last paragraph of the British Government's Declaration.

defence cannot be localized in a single country and its preparation must permeate the activities of every department of Government and must demand from every department the fullest co-operation. If His Majesty's Government are to take full responsibility for the conduct of the naval, military and air defence of India, as it is their duty to do, then the defence of India must be dealt with by them as part of the world war effort in which they are now engaged, and the direction of that defence must rest in the hands of the Commander-in-Chief under the War Cabinet and their highest staff officers. But, as I have already pointed out, the Government of India must also have an effective share in the Defence counsels and so we have decided that the Commander-in-Chief must retain his position as a Member of the Executive Council.

Justification
of interim
provision
for reserva-
tion of
Defence

In order, however, that India may have her full voice in this central control of strategy, defensive and offensive, not only in India itself but in all the interrelated theatres of war, we have invited the appointment of a representative Indian to the War Cabinet and to the Pacific Council of the United Nations—that is one of the ways in which India will have her full say in the counsels of the Commonwealth and of the United Nations as an equal partner. And when it comes to the making of the peace, India will appoint her own representatives to the Peace Conference side by side with those of the other free nations and so make her contribution to the building of a new world order.

Provision
for parti-
cipation
of India in
conduct of
war and
making of
peace

I am confident that nothing further or more complete could be done towards the immediate realization of the just claims and demands of the Indian peoples. Our proposals are definite and precise. If they were to be rejected by the leaders of Indian opinion, there would be neither the time nor the opportunity to reconsider this matter till after the war and it would be a bitter blow to the friends of India all over the world.

Rejection of
proposals
would mean
postpone-
ment of
constitu-
tional issue
till end
of war.

III. Resolution of Congress Working Committee¹, April 2, 1942.

The Working Committee have given their full and earnest consideration to the proposals made by the British War Cabinet in regard to India and the elucidation thereof by Sir Stafford Cripps.

Perspective
of Cripps
Proposals

These proposals, which have been made at the very last hour because of the compulsion of events, have to be considered not only in relation to India's demand for independence, but more especially in the present grave war crisis, with a view to meeting effectively the perils and dangers that confront India and envelop the world.

Congress
wants
"realisation
of present
freedom".

The Congress has repeatedly stated, ever since the commencement of the war in September, 1939, that the people of India would line themselves with the progressive forces of the world and assume full responsibility to face the new problems and shoulder the new burdens that had arisen, and it asked for the necessary conditions to enable them to do so to be created. The essential condition was the freedom of India, for only the realization of present freedom could light the flame which could illumine millions of hearts and move them to action.

At the last meeting of the All-India Congress Committee, after the commencement of the war in the Pacific, it was stated that: "Only a free and independent India can be in a position to undertake the defence of the country on a national basis and be of help in the furtherance of the larger causes that are emerging from the storm of war."

The British War Cabinet's new proposals relate principally to the future, upon the cessation of hostilities. The Committee, while recognizing that self-determination for the people of India is accepted in

¹ This resolution was communicated to Sir Stafford Cripps on April 2, but it was not released to the Press till April 10, after the talks had failed.

principle in that uncertain future, regret that this is fettered and circumscribed and certain provisions have been introduced which gravely imperil the development of a free and united National Government and the establishment of a democratic state. Even the constitution-making body is so constituted that the people's right to self-determination is vitiated by the introduction of non-representative elements.

Principle of self-determination "fettered and circumscribed"

The people of India have, as a whole, clearly demanded full independence and the Congress has repeatedly declared that no other status except that of independence for the whole of India could be agreed to or could meet the essential requirements of the present situation.

The Committee recognize that future independence may be implicit in the proposals, but the accompanying provisions and restrictions are such that real freedom may well become an illusion. The complete ignoring of ninety millions of people in the Indian States and their treatment as commodities at the disposal of their rulers is a negation of both democracy and self-determination. While the representation of an Indian State in the constitution-making body is fixed on a population basis, the people of the State have no voice in choosing those representatives, nor are they to be consulted at any stage while decisions vitally affecting them are being taken. Such States may in many ways become barriers to the growth of Indian freedom, enclaves where foreign authority still prevails, and where the possibility of maintaining foreign armed forces has been stated to be a likely contingency and a perpetual menace to the freedom of the people of the States as well as of the rest of India.

States people completely ignored

States to be foreign "enclaves"

The acceptance beforehand of the novel principle of non-accession for a Province is also a severe blow to the conception of Indian unity and an apple of discord likely to generate growing trouble in the

Principle
of "non-
accession"
for
Provinces

Provinces, and which may well lead to further difficulties in the way of the Indian States merging themselves in the Indian Union. The Congress has been wedded to Indian freedom and unity and any break of that unity, especially in the modern world when people's minds inevitably think in terms of ever larger federations, would be injurious to all concerned and exceedingly painful to contemplate. Nevertheless, the Committee cannot think in terms of compelling the people in any territorial unit to remain in an Indian Union against their declared and established will. While recognizing this principle, the Committee feel that every effort should be made to create conditions which would help the different units in developing a common and co-operative national life. The acceptance of this principle inevitably involves that no changes should be made which result in fresh problems being created and compulsion being exercised on other substantial groups within that area. Each territorial unit should have the fullest possible autonomy within the Union consistently with a strong national State. The proposal now made on the part of the British War Cabinet encourages and will lead to attempts at separation at the very inception of the Union and thus create friction just when the utmost co-operation and goodwill are most needed. This proposal has been presumably made to meet the communal demand, but it will have other consequences also and lead politically reactionary and obscurantist groups among different communities to create trouble and divert public attention from the vital issues before the country.

British
proposal
will
encourage
attempts at
separation.

"It is the
present
that
counts".

Any proposal concerning the future of India must demand attention and scrutiny, but in to-day's grave crisis, it is the present that counts and even proposals for the future are important in so far as they affect the present. The Committee necessarily attach the greatest importance to this aspect of the question, and on this ultimately depends what advice

they should give to those who look to them for guidance. For this the present British War Cabinet's proposals are vague and altogether incomplete, and it would appear that no vital changes in the present structure are contemplated. It has been made clear that the defence of India will in any event remain under British control. At any time Defence is a vital subject; during wartime it is all-important and covers almost every sphere of life and administration. To take away Defence from the sphere of responsibility at this stage is to reduce that responsibility to a farce and a nullity, and to make it perfectly clear that India is not going to be free in any way and her Government is not going to function as a free and independent Government during the pendency of the war.

British proposals
"vague and altogether incomplete"

Defence

The Committee would repeat that the essential and fundamental prerequisite for the assumption of responsibility by the Indian people in the present, is their realization as a fact that they are free and are in charge of maintaining and defending their freedom. What is most wanted is the enthusiastic response of the people, which cannot be evoked without the fullest trust in them and the devolution of responsibility on them in the matter of Defence. It is only thus that even at this grave eleventh hour it may be possible to galvanize the people of India to rise to the height of the occasion. It is manifest that the present Government of India, as well as its Provincial agencies, are lacking in competence, and are incapable of shouldering the burden of India's defence. It is only the people of India, through their popular representatives, who may shoulder this burden worthily. But that can only be done by present freedom, and full responsibility being cast upon them.

Indians can defend their freedom only when "full responsibility" is cast upon them.

The Committee, therefore, are unable to accept the proposals put forward on behalf of the British War Cabinet.

Rejection of proposals

IV. Pandit Nehru on Cripps Proposals¹, April 12, 1942.

Respon-
sibility for
failure

Who is responsible for the failure of the Cripps negotiations? In answer to this question, Pandit Nehru explained in detail the various stages of the negotiations. If he had been asked just before his last interview with Sir Stafford Cripps, he would have said that the chances of coming to an agreement were about 75 per cent. At that interview, however, that full picture which Sir Stafford, suddenly and for the first time, put before them of the proposals was such that he could not agree to it. "A big change had occurred somewhere in the middle", said Pandit Nehru. It was obvious, he added, that there was some trouble between Sir Stafford and others.

Pandit Nehru went on to say : "While it was my extreme desire to find a way out and make India function effectively for defence and make the war a popular effort—so great was my desire that some things I have stood for during the last quarter of a century, things which I could never have imagined for a moment I would give up, I now agreed to give up—I am convinced personally that it is impossible for us to agree to the proposals as they eventually emerged from the British Government's mind. I am in complete and whole-hearted agreement with the Congress resolution and the letters of the Congress President."

Change in
attitude of
Cripps

The change in the attitude of Sir Stafford Cripps which led to the sudden breakdown of the negotiations was then described by Pandit Nehru. From the first, the impression which Sir Stafford had given was that the new Government would be a National Government. Sir Stafford had himself often used the words, "National Cabinet." He had also said that the position of the Viceroy would be analogous to

¹ Statement at Press Conference, New Delhi. See *The Discovery of India*, pp. 548-562.

that of the King, in other words, a constitutional head. The language used by Sir Stafford had led them to assume that everything was being transferred except Defence and also that the Viceroy would not interfere with the decision of the Cabinet though he might have special powers such as in connection with the States or some major issue. So the question of the new Government's powers, etc., was not even discussed. At the last interview on Thursday night, however, the picture which Sir Stafford gave showed that the premises and assumptions on which they had been arguing had no real foundation. Sir Stafford began to talk of the Viceroy's "Executive Council" and not a "National Government." Names did make a difference. "If we go to the country, talking about the Viceroy's Executive Council, what would the people think?" asked Pandit Nehru amidst laughter. They agreed to the legal phraseology, but contrary to their old assumptions, Sir Stafford suddenly made it perfectly clear that there would be no essential change between the position of the Viceroy's Council and that of the new Government which they were asked to join. "I was amazed," declared Pandit Nehru. It might be that Sir Stafford had been pulled up by his senior partner in England or someone here. "We cannot change laws," said Sir Stafford, but when he was asked: "Tell us at least what conventions you propose. Will they function as a Cabinet? Will the Viceroy work as a constitutional head?" Sir Stafford replied: "I am totally unable to say anything on the subject, because it is completely within the discretion of the Viceroy. Go to him later on and discuss the matter with him. I cannot interfere or indicate what should be done." So it amounted to the old August offer again—with a few minor changes. They were merely asked to agree to join the Viceroy's Council practically unconditionally—with the vague background provided by the Cabinet's declaration.

"National Government" or Executive Council ?

Cripps
"pulled up"
by some-
body

"Old August offer. . . with a few minor changes"

Congress
attitude
towards
Defence

Dealing with the Defence question, Pandit Nehru said that at no time had it been suggested by the Congress that the normal powers of the Commander-in-Chief for carrying on the war in an effective way should be interfered with. But in addition to his powers as Commander-in-Chief, he was now having other powers which were really those of a Defence Minister. Pandit Nehru said that the removal of Defence from their responsibilities made the position of the Defence Minister absurd and ridiculous. Their conception of defence was different from that of the Government. It was not keeping a regiment here and there, but they wanted to mobilize hundreds of millions of Indians. They wanted to make every man and woman do something for the war—make it a popular war. The military conception was to fight with their armies and, if the latter failed, to surrender, but their conception was different. They would not surrender whatever happened—whatever happened to military forces, popular resistance should continue to the end—as in China and Russia. Could they discharge their duty in this spirit? Could they make India hum as an organized unit of resistance? Could they make India feel that she was fighting her own war for her freedom? That was their idea in asking for a popular conception of Defence, but the Government's attitude as put to them was a singularly complacent attitude—a conception of India from a standpoint which was peculiar only to England. "We are in the right. All those who are against us, are not only in the wrong, but damnably in the wrong."

India must
feel that
"she was
fighting her
own war
for her
freedom".

Referring to the Defence question during the Cripps negotiations Pandit Jawaharlal Nehru said that at first a certain formula was given by Sir Stafford according to which the Commander-in-Chief was to be War Minister and the Defence Minister was to have certain functions entrusted to him. Attached to it was a list—practically exhaustive—of the functions entrusted to the Defence Minister.

They were propaganda, canteens, petroleum, amenities, stationery and subjects of that kind. The subjects proposed to be allotted were such that "they would have made the Defence Minister's position ridiculous in the eyes of the public," said Pandit Nehru. It was not acceptable to the Congress Working Committee. Then came a new formula—at the instance of a third party but presumably with Sir Stafford's approval—with no list of subjects attached.

Proposed
functions of
Defence
Minister

In the Working Committee's opinion, this afforded a basis for arriving at an agreed formula for Defence, but the really important point was—what would be the subjects transferred to the Defence Minister? Sir Stafford did not reply to a letter asking for a list of these subjects: "At no stage did we receive them", said Pandit Nehru. When they asked him personally, Sir Stafford referred them to the Army Manual. Later, Sir Stafford entered into a long disquisition on the Indian Army—that it was really an offshoot of the British Army controlled by the British Government, through their representative, the Commander-in-Chief. It was explained to Sir Stafford on behalf of the Congress that it was not their intention to do anything to upset present arrangements, but what they wanted was, firstly, to make the Indian people feel that the Army was theirs. They wanted to give the national background, the psychological appeal, necessary for a popular war. Sir Stafford's attitude was, however, rigid. In the end, he said that the subjects were those already given in his original formula.

Cripps on
Indian
Army

Sir Stafford refused to follow the Australian model saying that Mr. Curtin in Australia had even greater powers than Mr. Churchill had in England. As regards the citizen army, Sir Stafford said that the matter would lie within the discretion of the Commander-in-Chief, but he added that the Commander-in-Chief would probably agree. If he did not agree, it was open to the Ministers to resign.

Australian
model
rejected
by
Cripps

Commenting on this attitude of the Government, Pandit Nehru said : "That is not the way to bring about a settlement" . . .

* * * *

In answer to a question, Pandit Nehru said :—

Hostility
to the
British
in India

Wanted :
"a sensation
of freedom
to the
people of
India"

India's
attitude to
Japan

"So far as I know India, and I know it tolerably well, the major sentiment in India naturally is one of hostility to the British in India. You cannot root out 150 years of past history and all that has happened in those years. It has sunk deep down into the Indian soul. Suppose we had come to an agreement and had to convert, to change that sentiment suddenly, we could have done it if we could have given a sensation of freedom to the people of India. The fundamental factor to-day is distrust or dislike of the British Government. It is not pro-Japanese sentiment. It is anti-British sentiment. That may occasionally lead individuals to pro-Japanese expression of views. This is short-sighted. It is a slave's sentiment, a slave's way of thinking, to imagine that to get rid of one person who is dominating us we can expect another person to help us and not dominate us later. Free men ought not to think that way. It distresses me that any Indian should talk of the Japanese liberating India. The whole past history of Japan has been one of dominating others. Japan comes here either for Imperialist reasons straight out or to fight with the British Government. Anyhow, whatever the reason, if it comes here, it does not come here to liberate."

* * * *

Independ-
ence of
India
should be
"accepted
in
principle".

Pandit Nehru referred to the offer made by Mr. Churchill, at a critical time in the war, to France for a union with England. The suggestion made by Pandit Nehru was that Parliament should pass a small Bill of six sections giving independent status to India and agreeing to the principle of self-determination. Other details, communal and other, could be left over for settlement later, but if this had been

done, the whole approach to the question would have become different—as between England and India and also between the communities. The Congress point of view was this—they were prepared to have a National Government for war purposes, but as regards the future Government, they were prepared to leave over for future consideration the question of detailed and precise proposals for the future Government. Pandit Nehru said, however, that the present proposals would have also to be considered with the viewpoint of the future. If the independence of India was now accepted in principle, it would have a great psychological effect on the people.

Asked about Sir Stafford's reference to the "tyrannical rule of a majority" in his farewell statement Pandit Nehru said :

"I want to make it perfectly clear that throughout our talks and correspondence, except for the last two letters, there was no reference at all at any stage in the slightest degree to the question of majority rule, because much as we disliked it we accepted the idea of a composite Cabinet formed from different groups representing different ideologies in the country, some coming among others from the Muslim League and from the Hindu Mahasabha and the Sikhs. We accepted that, although it was a thing which would have made the functioning of the National Government very difficult. At no stage, did we discuss the number of any groups in the Council. It was important, but we did not discuss it because we, speaking on behalf of the Congress, never laid stress on the Congress having this or that. We wanted no power for the Congress. We always talked in terms of what the National Government would have, whoever may be there and whatever numbers it may consist of. We talked of it as a group and of what power that group should have. The communal issue in any form was never discussed except that Sir Stafford Cripps often repeated one formula, that

"Tyrannical rule of a majority"

Congress did not want power for itself.

he was only concerned with agreement between three groups in India, the British Government, the Congress and the Muslim League. He did not care whether others agreed or not, but if any of these three did not agree the scheme fell through.

Cripps
"continually
balancing
the different
communal
factors"

"For the first time," he went on, "this question was definitely emphasised by Sir Stafford Cripps in his letter dated April 10 in which he used the phrase 'tyrannical rule of the majority.' Now, for an eminent lawyer and constitutionalist like Sir Stafford to use these phrases in this manner is extraordinary. We were thinking in terms really not even of a Legislature but of a Cabinet consisting of 15 persons. What the proportions in that Cabinet may be we never discussed. Suppose there was the so-called Congress majority in it, though the Congress was not thinking on those lines. But Sir Stafford's mind was continually functioning, balancing the different communal factors. Suppose, then, in a Cabinet of 15 there was a Congress majority of eight or nine. Now Cabinets, if they are to function at all, cannot function and do not function, especially in war-time, by majority. You must have a certain homogeneity or common outlook; otherwise the Cabinet may break up. Sir Safford has been continuously reminding us of the ultimate sanction of resignation. If we had that ultimate sanction, so also every group in that Cabinet had that ultimate sanction. So, the talk of the tyranny of the majority is amazing and fantastic nonsense."

V. Resolution of Muslim League Working Committee, April 2, 1942¹.

The Committee appreciate that the British Prime Minister in his pronouncement made it clear that the Draft Declaration embodied only the pro-

¹ The resolution was released to the Press on April 11, 1942.

proposals of His Majesty's Government and not their decision and that they are subject to agreement between the main elements in India, thus maintaining the validity of the Declaration of August 8, 1940, which had promised to the Mussalmans that neither the machinery for the framing of the Constitution should be set up nor the Constitution itself should be enforced without the approval and consent of Muslim India.

The Committee, while expressing their gratification that the possibility of Pakistan is recognized by implication by providing for the establishment of two or more independent Unions in India, regret that the proposals of His Majesty's Government embodying the fundamentals are not open to any modification and, therefore, no alternative proposals are invited. In view of the rigidity of the attitude of His Majesty's Government with regard to the fundamentals not being open to any modification, the Committee have no alternative but to say that the proposals in their present form are unacceptable to them for reasons given below.

(1) The Mussalmans, after 25 years of genuine efforts for the reconciliation of the two major communities and the bitter experience of the failure of such efforts, are convinced that it is neither just nor possible, in the interest of peace and happiness of the two peoples, to compel them to constitute one Indian Union, composed of the two principal nations—Hindus and Muslims—which appears to be the main object of His Majesty's Government, as adumbrated in the Preamble of the Draft Declaration, the creation of more than one Union being relegated only to the realm of remote possibility and purely illusory.

(2) In the Draft Declaration a Constitution-making body has been proposed with the primary object of creating one Indian Union. So far as the Muslim League is concerned, it has finally decided that the only solution of India's constitutional prob-

"Possibility of Pakistan is recognised by implication".

Grounds for rejection of Cripps proposals.

(1) Plan for one Indian Union for two nations

(2) Plan for one Constitution-making body

lem is the partition of India into independent zones ; and it will, therefore, be unfair to the Mussalmans to compel them to enter such a constitution-making body, whose main object is the creation of a new Indian Union. With conditions as they are, it will be not only futile but on the contrary may exacerbate bitterness and animosity amongst the various elements in the country.

Separate
electorates
not recog-
nised for
Constitu-
tion-making
body which
will take
decisions
by a bare
majority

Besides, the machinery which has been proposed for the creation of the constitution-making body, namely, that it will consist of members elected by the newly elected Lower Houses of the eleven Provinces, upon the cessation of hostilities, as a single electoral college by the system of proportional representation, is a fundamental departure from the right of the Mussalmans, hitherto enjoyed by them, to elect their representatives by means of separate electorates, which is the only sure way in which true representatives of the Mussalmans can be chosen.

The constitution-making body will take decisions by a bare majority on all questions of most vital and paramount character involved in the framing of the Constitution which is a departure from the fundamental principles of justice and contrary to constitutional practice so far followed in the various countries and Dominions ; and the Mussalmans by agreeing to this will, instead of exercising their right and judgement as a constituent factor, be at the entire mercy of the constitution-making body, in which they will be a minority of about twenty-five per cent.

3) Right of
non-acces-
sion con-
ceded to
artificially
created
Provinces

(3) The right of non-accession to the Union, as contemplated in the Draft Declaration, has been conceded, presumably, in response to the insistent demands by the Mussalmans for the partition of India, but the method and procedure laid down are such as to negative the professed object, for in the draft proposals the right of non-accession has been given to the existing provinces, which have been

formed from time to time for administrative convenience and on no logical basis.

The Mussalmans cannot be satisfied by such a Declaration on a vital question affecting their future destiny and demand a clear and precise pronouncement on the subject. Any attempt to solve the future problem of India by the process of evading the real issues is to court disaster.

In the draft proposals no procedure has been laid down as to how the verdict of the Province is to be obtained in favour of, or against, accession to the one Union, but in the letter dated April 2 from the secretary of Sir Stafford Cripps. addressed to the President of the All-India Muslim League, it is stated that "a province should reach the decision whether or not to stand out of the Union by a vote in the Legislative Assembly on a resolution to stand in. If the majority for accession to the Union is less than sixty per cent, the minority will have the right to demand a plebiscite of the adult population."

In this connection it must be emphasized that in the Provinces where the Mussalmans are in a majority, as in the case of the major Provinces of Bengal and the Punjab, they are in a minority in the Legislative Assemblies; and in the Assemblies of Sind and the North-West Frontier Province the total number, namely 60 and 50 respectively, is so small and the weightage given to the non-Muslims so heavy that it can be easily manipulated and a decision under such conditions cannot be the true criterion of ascertaining the real opinion of the Mussalmans of those Provinces.

Procedure
for securing
the verdict
of Provinces
on accession

As regards the suggested plebiscite in the Provinces in which the Mussalmans are in a majority, in the event of the requisite majority not being

Plebiscite
in Muslim-
majority
Provinces

available in the Legislative Assemblies, the procedure laid down is that reference shall be made to the whole adult population of the Provinces and not to the Mussalmans alone, which is to deny them the inherent right to self-determination.

States

(4) With regard to the Indian States, it is the considered opinion of the Committee that it is a matter for them to decide whether to join or not to join or form a Union.

Treaties

(5) With regard to the treaties to be negotiated between the Crown and the Indian Union or Unions, the proposals do not indicate as to what would happen in case of disagreement on the terms between the contracting parties, nor is there any provision made as to what would be the procedure when there is a difference of opinion in negotiating a revision of treaty arrangements with the Indian States in the new situation.

(6) No complete picture of interim arrangement available

(6) With regard to the interim arrangement, there is no definite proposal except the bare statement that His Majesty's Government desire and invite the effective and immediate participation of the leaders of the principal sections of the Indian people in the counsels of their country, of the Commonwealth, and of the United Nations. The Committee are, therefore, unable to express their opinion until a complete picture is available. Another reason why the Committee are unable to express their opinion on the interim arrangements for participation in the counsels of the country is that Sir Stafford Cripps has made it clear that the scheme goes through as a whole or is rejected as a whole, and that it would not be possible to retain only the part relating to the immediate arrangements at the Centre and discard the rest of the draft scheme; and as the Committee have come to the conclusion that the proposals for the future are unacceptable, it will

with a view to making possible the formation of a National Government, "it has become necessary to . . . acknowledge the Muslim League's claim for separation, should the same be persisted in when the time comes for framing a Constitution for India." On the same day the A.-I. C. C. resolved that "any proposal to disintegrate India by giving liberty to any component State or territorial unit to secede from the Indian Union or Federation will be highly detrimental to the best interests of the people of the different States and Provinces and the country as a whole . . ."]

Congress
repudiation
of India's
disintegration
(1942)

Basis for terms of settlement¹ between the Indian National Congress and the All-India Muslim League to which Gandhiji and Mr. Jinnah agree and which they will endeavour respectively to get the Congress and the League to approve:

(1) Subject to the terms set out below as regards the Constitution for Free India, the Muslim League endorses the Indian demand for independence and will co-operate with the Congress in the formation of a provisional Interim Government for the transitional period.

(2) After the termination of the war a Commission shall be appointed for demarcating contiguous districts in the north-west and east of India, wherein the Muslim population is in absolute majority. In the areas thus demarcated, a plebiscite of all the inhabitants held on the basis of adult suffrage or other practicable franchise shall ultimately decide the issue of separation from Hindustan. If the majority decide in favour of forming a sovereign state separate from Hindustan, such decision shall be given effect to, without prejudice to the right of districts on the border to choose to join either State.

Plan for
partition

(3) It will be open to all parties to advocate their points of view before the plebiscite is held.

¹ Mr. Rajagopalachari wrote to Mr. Jinnah on April 8, 1944, that the 'basis for a settlement' had Mahatma Gandhi's 'full approval'.

Conditions
for
operations

(4) In the event of separation, mutual agreements shall be entered into for safeguarding defence, and commerce and communications and for other essential purposes.

(5) Any transfer of population shall only be on an absolutely voluntary basis.

(6) These terms shall be binding only in case of transfer by Britain of full power and responsibility of the governance of India.

II. Mr. Jinnah to Mahatma Gandhi, September 10, 1944.

I am . . . submitting to you the following points which require clarification:

(1) With regard to the preamble: in what capacity will you be a consenting party if any agreement is reached between you and me ?

Jinnah's
queries on
Rajagopala-
chari
Formula

(2) Clause 1: With regard to "the Constitution for Free India" referred to in this clause, I should like to know first—what Constitution do you refer to, who will frame it and when will it come into being ?

Next, it is stated in the formula that "the Muslim League endorses the Indian demand for independence." Does it mean the Congress demand for independence as formulated in the August Resolution of 1942 by the All-India Congress Committee in Bombay or, if not, what is the significance of this term, for you know the Muslim League has made it clear, not only by its resolutions but by its creed, that we stand for the freedom and independence of the whole of this sub-continent, and that applies to Pakistan and Hindustan.

Next, it is stated that the Muslim League "will co-operate with the Congress in the formation of a

provisional Interim Government for the transitional period." I should like to know the basis or the lines on which such a Government is to be set up or constituted. If you have a complete or definite scheme, please let me have it.

(3) Clause 2: Who will appoint the Commission referred to in this clause and who will give effect to their findings? What is the meaning of 'absolute majority' referred to in it? Will the contemplated plebiscite be taken districtwise or, if not, on what basis? Who will determine and decide whether such a plebiscite should be based on adult franchise or 'other practicable franchise'? Who will give effect to the decision or verdict of the above-mentioned plebiscite? Would only the districts on the border, which are taken out from the boundaries of the present Provinces by delimitation, be entitled to choose to join either State, or would also those outside the present boundaries have the right to choose to join either State?

(4) Clause 3: Who are meant by "all parties" in this clause?

(5) Clause 4: I should like to know between whom and through what machinery and agency will the "mutual agreements" referred to in this clause be entered into? What is meant by "safeguarding defence, and commerce and communications and for other essential purposes"? Safeguarding against whom?

(6) Clause 6: . . . I should like to know to whom is this power to be transferred, through what machinery and when?

III. Mahatma Gandhi to Mr. Jinnah, September 11, 1944.

. . . I have approached you as an individual. My life mission has been Hindu-Muslim unity which

I want for its own sake but which is not to be achieved without the foreign ruling power being ousted.

Hence the first condition of the exercise of the right of self-determination is achieving independence by the joint action of all parties and groups composing India. If such joint action is unfortunately impossible, then too, I must fight with the assistance of such elements as can be brought together.

* * * *

. . . The Lahore resolution is indefinite. Rajaji has taken from it the substance and given it a shape. Now for the points raised by you.

1. I have already answered this in the foregoing.

2. The Constitution will be framed by the Provisional Government contemplated in the formula or an authority specially set up by it after the British power is withdrawn. The independence contemplated is of the whole of India as it stands. The basis for the formation of the provisional Interim Government will have to be agreed to between the League and the Congress.

Clarification
of Raja-
gopalachari
Formula by
Mahatma
Gandhi

3. The Commission will be appointed by the Provisional Government. Absolute majority means a clear majority over non-Muslim elements as in Sind, Baluchistan or the Frontier Province. The form of plebiscite and the franchise must be a matter for discussion.

4. "All parties" means parties interested.

5. "Mutual agreement" means agreement between contracting parties. "Safeguarding defence etc." means for me a central or joint board of control. "Safeguarding" means safeguarding against all who may put the common interests in jeopardy.

6. The power is to be transferred to the nation, that is, to the Provisional Government. The formula

contemplates peaceful transfer by the British Government . . .

IV. Mahatma Gandhi to Mr. Jinnah, September 15, 1944.

You must admit that the resolution¹ itself makes no reference to the two nations theory. In the course of our discussions you have passionately pleaded that India contains two nations, i.e., Hindus and Muslims, and that the latter have their homelands in India as the former have theirs . . . I find no parallel in history for a body of converts and their descendants claiming to be a nation apart from the parent stock. If India was one nation before the advent of Islam it must remain one in spite of the change of faith of a very large body of her children.

Criticism
of "two
nations"
theory

You do not claim to be a nation by right of conquest but by reason of acceptance of Islam. Will the two nations become one if the whole of India accepted Islam? Will Bengalis, Oriyas, Andhras, Tamilians, Maharashtrians, Gujaratis, etc., cease to have their special characteristics if all of them became converts to Islam? These all have become one politically because they are subject to one foreign control. They are trying to-day to throw off that subjection.

You seem to have introduced a new test of nationhood. If I accept it, I would have to subscribe to many more claims and face an insoluble problem. The only real though awful test of our nationhood arises out of our common political subjection. If you and I throw off this subjection by our combined effort we shall be born a politically free nation out of our travail. If by then we have not learnt to prize our freedom we may quarrel among ourselves and for want of a common master holding us together in his iron grip seek to split up

Real test of
nationhood
is not
religion but
common
political
subjection.

¹ The Lahore (1940) Resolution of the Muslim League.

into small groups or nationalities. There will be nothing to prevent us from descending to that level and we shall not have to go in search of a master. There are many claimants to the throne that never remains vacant.

With this background I shall present you with my difficulty in accepting your resolution.

Mahatma
Gandhi's
queries on
Lahore
Resolution

(1) Pakistan is not in the resolution. Does it bear the original meaning Punjab, Afghanistan, Kashmir, Sind and Baluchistan out of which the name was mnemonically formed? If not, what is it?

(2) Is the goal of Pakistan Pan-Islam?

(3) What is it that distinguishes an Indian Muslim from every other Indian, if not his religion? Is he different from a Turk or an Arab?

(4) What is the connotation of the word "Muslim" in the resolution under discussion? Does it mean the Muslims of the India of geography or of the Pakistan to be?

(5) Is the resolution addressed to the Muslims by way of education, or to the inhabitants of the whole of India by way of appeal, or to the foreign ruler as an ultimatum?

(6) Are the constituents in the two zones to constitute "independent States", an undefined number in each zone?

(7) Is the demarcation to take place during the pendency of British rule?

(8) If the answer to the last question is in the affirmative, the proposal must be accepted by Britain and then imposed upon India, not evolved from within by the free will of the people of India!

(9) Have you examined the position and satisfied yourself that these "independent States" will be materially and otherwise benefited by being split up into fragments?

(10) Please satisfy me that these independent sovereign States will not become a collection of poor States, a menace to themselves and to the rest of India.

(11) Pray show me by facts and figures or otherwise how independence and welfare of India as a whole can be brought about by the acceptance of the resolution.

(12) How are the Muslims under the Princes to be disposed of as a result of this scheme?

(13) What is your definition of "minorities"?

(14) Will you please define the "adequate, effective and mandatory safeguards" for minorities referred to in the second part of the resolution?

(15) Do you not see that the Lahore resolution contains only a bare statement of the objective and does not give any idea as to the means to be adopted for the execution of the idea and the concrete corollaries thereof? For instance,

(a) Are the people in the regions falling under the plan to have any voice in the matter of separation and, if so, how is it to be ascertained?

(b) What is the provision for defence and similar matters of common concern contemplated in the Lahore resolution?

(c) There are many groups of Muslims who have continuously expressed dissent from the policy of the League. While I am prepared to accept the preponderating influence and position of the League and have approached you for that very reason, is it not our joint duty to remove their doubts and carry them with us by making them feel that they and their supporters have not been practically disfranchised?

(d) Does this not lead again to placing the resolution of the League before the people of the zone concerned as a whole for acceptance?

**V. Mr. Jinnah to Mahatma Gandhi,
September 17, 1944.**

Justifica-
tion of
"two
nations"
theory

We maintain and hold that Muslims and Hindus are two major nations by any definition and test of a nation. We are a nation of a hundred million, and what is more, we are a nation with our own distinctive culture and civilization, language and literature, art and architecture, names and nomenclature, sense of values and proportion, legal laws and moral codes, customs and calendar, history and traditions, aptitudes and ambitions, in short, we have our own distinctive outlook on life and of life. Now I shall proceed to reply to your various points:

(1) Yes, the word "Pakistan" is not mentioned in the resolution and it does not bear the original meaning. The word has now become synonymous with the Lahore resolution.

(2) This point does not arise, but still I reply that the question is a mere bogey.

Replies to
Mahatma
Gandhi's
queries

(3) This point is covered by my answer that the Mussalmans of India are a nation. As to the last part of your query, it is hardly relevant to the matter of clarification of the resolution.

(4) Surely you know what the word "Muslims" means.

(5) The point does not arise by way of clarification of the text of the Lahore resolution.

(6) No, they will form units of Pakistan.

(7) As soon as the basis and the principles embodied in the Lahore resolution are accepted, the question of demarcation will have to be taken up immediately.

(8) In view of my reply to (7), your question (8) has been answered.

(9) Does not relate to clarification.

(10) My answer to (9) covers this point.

(11) Does not arise out of the clarification of the resolution. Surely this is not asking for the clarification of the resolution. I have in numerous speeches of mine and the Muslim League in its resolutions have pointed out that this is the only solution of India's problem and the road to achieve freedom and independence of the peoples of India.

(12) "Muslims under the Princes." The Lahore resolution is only confined to British India. The question does not arise out of the clarification of the resolution.

(13) The definition of "minorities". You yourself have often said minorities means "accepted minorities."

(14) The "adequate, effective and mandatory safeguards" for minorities referred to in the resolution are a matter for negotiation and settlement with the minorities in the respective States, *viz.*, Pakistan and Hindustan.

(15) It does give basic principles and when they are accepted, then the details will have to be worked out by the contracting parties.

(a) Does not arise by way of clarification.

(b) Does not arise by way of clarification.

(c) The Muslim League is the only authoritative and representative organization of Muslim India.

(d) No. See answer (c).

VI. Mr. Jinnah to Mahatma Gandhi, September 21, 1944.

Can you not appreciate our point of view that we claim the right of self-determination as a nation and not as a territorial unit, and that we are entitled to exercise our inherent right as a Muslim nation, which is our birth-right? Whereas you are labouring under the wrong idea that self-determination means only that of a territorial unit which, by the way, is

Meaning of
self-deter-
mination

neither demarcated nor defined yet, and there is no Union or Federal constitution of India in being, functioning as a sovereign Central Government, ours is a case of division and carving out sovereign States by way of settlement between two major nations, Hindus and Muslims, and not of severance or secession from any existing Union which is non-existent in India. The right of self-determination which we claim postulates that we are a nation, and as such it would be the self-determination of the Mussalmans, and they alone are entitled to exercise that right.

VII. Mahatma Gandhi to Mr. Jinnah, September 24, 1944.

I proceed on the assumption that India is not to be regarded as two or more nations but as one family consisting of many members of whom the Muslims living in the north-west zone, *i.e.*, Baluchistan, Sind, North-West Frontier Province and that part of the Punjab where they are in absolute majority over all the other elements, and in parts of Bengal and Assam where they are in absolute majority, desire to live in separation from the rest of India.

Differing from you on the general basis¹, I can yet recommend to the Congress and the country the acceptance of the claim for separation contained in the Muslim League resolution of Lahore of 1940 on my basis and on the following terms:

(a) The areas should be demarcated by a Commission approved by the Congress and the League. The wishes of the inhabitants of the areas demarcated should be ascertained through the votes of the adult population of the areas or through some equivalent method.

Conditions
for accept-
ance of
Lahore
Resolution

¹ Mahatma Gandhi wrote to Mr. Jinnah on September 22, 1944: "I am unable to accept the proposition that the Muslims of India are a nation distinct from the rest of the inhabitants of India. Mere assertion is no proof".

(b) If the vote is in favour of separation, it shall be agreed that these areas shall form a separate State as soon as possible after India is free from foreign domination and can, therefore, be constituted into two sovereign independent States.

(c) There shall be a Treaty of Separation which should also provide for the efficient and satisfactory administration of Foreign Affairs, Defence, Internal Communications, Customs, Commerce and the like, which must necessarily continue to be the matters of common interest between the contracting parties.

(d) The Treaty shall also contain terms for safeguarding the rights of the minorities in the two States.

(e) Immediately on the acceptance of this agreement by the Congress and the League the two shall decide upon a common course of action for the attainment of independence of India.

(f) The League will, however, be free to remain out of any direct action to which the Congress may resort and in which the League may not be willing to participate.

VIII. Mr. Jinnah to Mahatma Gandhi, September 25, 1944.

You have already rejected the basis and fundamental principles of the Lahore resolution.

You do not accept that the Mussalmans of India are a nation.

You do not accept that the Mussalmans have an inherent right of self-determination.

You do not accept that they alone are entitled to exercise this right of theirs for self-determination.

You do not accept that Pakistan is composed of two zones, North-West and North-East, comprising six Provinces, namely, Sind, Baluchistan, North-West Frontier Province, the Punjab, Bengal and Assam, subject to territorial adjustments that

Mr. Jinnah's
rejection of
Gandhi's
offer

Territorial
extent of
Pakistan

may be agreed upon, as indicated in the Lahore resolution.

* * * *

Now let me take your main terms:

(a) "I proceed on the assumption that India is not to be regarded as two or more nations but as one family consisting of many members of whom the Muslims living in the north-west zone, *i.e.*, Baluchistan, Sind, North-West Frontier Province and that part of the Punjab where they are in absolute majority over all the other elements, and in parts of Bengal and Assam where they are in absolute majority, desire to live in separation from the rest of India." If this term were accepted and given effect to, the present boundaries of these provinces would be maimed and mutilated beyond redemption and leave us only with the husk, and it is opposed to the Lahore resolution.

"Maimed
and
mutilated"
Pakistan

(b) That even in those mutilated areas so defined, the right of self-determination will not be exercised by the Muslim, but by the inhabitants of those areas so demarcated. This again is opposed to the fundamentals of the Lahore resolution.

Right of
self-deter-
mination
not to be
exercised by
Muslims
only

(c) That if the vote is in favour of separation, they shall be allowed to form a separate State as soon as possible after India is free from foreign domination, whereas we propose that we should come to a complete settlement of our own immediately, and by our united front and efforts do everything in our power to secure the freedom and independence of the people of India on the basis of Pakistan and Hindustan.

Settlement
should
precede
achievement
of freedom.

(d) Next you say: "There shall be a Treaty of Separation which should also provide for the efficient and satisfactory administration of Foreign affairs, Defence, Internal Communications, Customs, Commerce and the like, which must necessarily continue to be matters of common interest between the con-

tracting parties." If these vital matters are to be administered by some Central authority, you do not indicate what sort of authority or machinery will be set up to administer these matters, and how and to whom again that authority will be responsible. According to the Lahore resolution, as I have already explained to you, all these matters, which are the life-blood of any State, cannot be delegated to any Central authority or Government. The matter of security of the two States and the natural and mutual obligations that may arise out of physical contiguity will be for the constitution-making body of Pakistan and that of Hindustan, or other party concerned, to deal with on the footing of their being two independent States.

Objection
to Central
authority
for matters
of common
interest

23. THE WAVELL PLAN, 1945.

I. Statement of Secretary of State¹, House of Commons, June 14, 1945.

1. During the recent visit of Field-Marshal Viscount Wavell to this country His Majesty's Government reviewed with him a number of problems and discussed particularly the present political situation in India.

Discussion
with
Viceroy

2. Members will be aware that since the offer by His Majesty's Government to India in March, 1942, there has been no further progress towards the solution of the Indian constitutional problem.

Political
deadlock
in India

3. As was then stated, the working out of India's new constitutional system is a task which can only be carried through by the Indian peoples themselves.

4. While His Majesty's Government are at all times most anxious to do their utmost to assist the Indians in the working out of a new constitutional settlement, it would be a contradiction in terms to speak of the imposition by this country of self-

¹ Mr. Leopold Amery (Conservative).

British Government cannot impose a solution.

governing institutions upon an unwilling India. Such a thing is not possible, nor could we accept the responsibility of enforcing such institutions at the very time when we were, by its purpose, withdrawing from all control of British Indian affairs.

Cripps Plan "stands in its entirety".

5. The main constitutional position remains therefore as it was. The offer of March, 1942, stands in its entirety without change or qualification. His Majesty's Government still hope that the political leaders in India may be able to come to an agreement as to the procedure whereby India's permanent future form of government can be determined.

6. His Majesty's Government are, however, most anxious to make any contribution that is practicable to the breaking of the political deadlock in India. While that deadlock lasts not only political but social and economic progress is being hampered.

Urgency of breaking political deadlock

7. The Indian administration, over-burdened with the great tasks laid upon it by the war against Japan and by the planning for the post-war period, is further strained by the political tension that exists.

8. All that is so urgently required to be done for agricultural and industrial development and for the peasants and workers of India cannot be carried through unless the whole-hearted co-operation of every community and section of the Indian people is forthcoming.

British Government's suggestion for interim period

9. His Majesty's Government have, therefore, considered whether there is something which they could suggest in this interim period, under the existing constitution, pending the formulation by Indians of their future constitutional arrangements, which would enable the main communities and parties to co-operate more closely together and with the British to the benefit of the people of India as a whole.

10. It is not the intention of His Majesty's Government to introduce any change contrary to the wishes of the major Indian communities. But

they are willing to make possible some step forward during the interim period if the leaders of the principal Indian parties are prepared to agree to their suggestions and to co-operate in the successful conclusion of the war against Japan as well as in the reconstruction in India which must follow the final victory.

11. To this end they would be prepared to see an important change in the composition of the Viceroy's Executive. This is possible without making any change in the existing statute law except for one amendment to the Ninth Schedule to the Act of 1935. That Schedule contains a provision that not less than three members of the Executive must have had at least ten years' service under the Crown in India. If the proposals I am about to lay before the House meet with acceptance in India, that clause would have to be amended to dispense with that requirement.

Proposal for
re-constitution
of
Viceroy's
Executive
Council

12. It is proposed that the Executive Council should be reconstituted and that the Viceroy should in future make his selection for nomination to the Crown for appointment to his Executive from amongst leaders of Indian political life at the Centre and in the provinces, in proportions which would give a balanced representation of the main communities, including equal proportions of Moslems and Caste Hindus.

13. In order to pursue this object, the Viceroy will call into conference a number of leading Indian politicians who are the heads of the most important parties or who have had recent experience as Prime Ministers of Provinces, together with a few others of special experience and authority. The Viceroy intends to put before this conference the proposal that the Executive Council should be reconstituted as above stated and to invite from the members of the conference a list of names. Out of these he would hope to be able to choose the future members

Proposal to
be placed
before
"leading
Indian
politicians"

whom he would recommend for appointment by His Majesty to the Viceroy's Council, although the responsibility for the recommendations must, of course, continue to rest with him, and his freedom of choice, therefore, remains unrestricted.

Co-operation in war against Japan

14. The members of his Council who are chosen as a result of this arrangement would, of course, accept the position on the basis that they would whole-heartedly co-operate in supporting and carrying through the war against Japan to its victorious conclusion.

Indianisation of Executive Council

15. The members of the Executive would be Indians with the exception of the Viceroy and the Commander-in-Chief, who would retain his position as War Member. This is essential so long as the defence of India remains a British responsibility.

Indian States not included in interim plan

16. Nothing contained in any of these proposals will affect the relations of the Crown with the Indian States through the Viceroy as Crown Representative.

17. The Viceroy has been authorised by His Majesty's Government to place this proposal before the Indian leaders. His Majesty's Government trust that the leaders of the Indian communities will respond. For the success of such a plan must depend upon its acceptance in India and the degree to which responsible Indian politicians are prepared to co-operate with the object of making it a workable interim arrangement. In the absence of such general acceptance existing arrangements must necessarily continue.

Co-operation at the Centre will be reflected in Provinces.

18. If such co-operation can be achieved at the Centre it will no doubt be reflected in the Provinces and so enable responsible Governments to be set up once again in those Provinces where, owing to the withdrawal of the majority party from participation, it became necessary to put into force the powers of the Governors under Section 93 of the Act of

1935. It is to be hoped that in all the Provinces these Governments would be based on the participation of the main parties, thus smoothing up communal differences and allowing Ministers to concentrate upon their very heavy administrative tasks.

19. There is one further change which, if these proposals are accepted, His Majesty's Government suggest should follow.

20. That is, that External Affairs (other than those tribal and frontier matters which fall to be dealt with as part of the defence of India) should be placed in the charge of an Indian Member of the Viceroy's Executive so far as British India is concerned, and fully accredited representatives shall be appointed for the representation of India abroad.

External Affairs (except tribal and frontier matters) to be placed under Indian member of Executive Council

21. By their acceptance of and co-operation in this scheme the Indian leaders will not only be able to make their immediate contribution to the direction of Indian affairs, but it is also to be hoped that their experience of co-operation in government will expedite agreement between them as to the method of working out the new constitutional arrangements.

22. His Majesty's Government consider, after the most careful study of the question, that the plan now suggested gives the utmost progress practicable within the present constitution. None of the changes suggested will in any way prejudice or prejudge the essential form of the future permanent constitution or constitutions for India.

Future form of constitution or constitutions not prejudged

23. His Majesty's Government feel certain that given goodwill and a genuine desire to co-operate on all sides, both British and Indian, these proposals can mark a genuine step forward in the collaboration of the British and Indian peoples towards Indian self-government and can assert the rightful position, and strengthen the influence, of India in the counsels of the nations.

II. Broadcast Talk of Lord Wavell, Delhi, June 14, 1945.

Composition
of Viceroy's
Executive
Council

I propose, with the full support of His Majesty's Government, to invite Indian leaders both of Central and Provincial politics to take counsel with me with a view to the formation of a new Executive Council more representative of organised political opinion. The proposed new Council would represent the main communities and would include equal proportions of Caste Hindus and Moslems. It would work, if formed, under the existing constitution. But it would be an entirely Indian Council, except for the Viceroy and the Commander-in-Chief, who would retain his position as War Member.

It is also proposed that the portfolio of External Affairs, which has hitherto been held by the Viceroy, should be placed in charge of an Indian Member of Council, so far as the interests of British India are concerned.

A further step proposed by His Majesty's Government is the appointment of a British High Commissioner in India, as in the Dominions, to represent Great Britain's commercial and other such interests in India.

"Definite
advance on
the road to
self-govern-
ment"

Such a new Executive Council will, you realise, represent a definite advance on the road to self-government. It will be almost entirely Indian, and the Finance and Home Members will for the first time be Indians, while an Indian will also be charged with the management of India's foreign affairs. Moreover, Members will now be selected by the Governor-General after consultation with political leaders, though their appointment will, of course, be subject to the approval of His Majesty the King-Emperor.

The Council will work within the frame-work of the present Constitution and there can be no question of the Governor-General agreeing not to exercise

his constitutional power of control; but it will of course not be exercised unreasonably.

I should make it clear that the formation of the Interim Government will in no way prejudice the final constitutional settlement.

The main tasks for this new Executive Council would be:—

First, to prosecute the war against Japan with the utmost energy till Japan is utterly defeated.

“Main
tasks”
for new
Executive
Council.

Secondly, to carry on the government of British India, with all the manifold tasks of post-war development in front of it, until a new permanent constitution can be agreed upon and come into force.

Thirdly, to consider, when the Members of the Government think it possible, the means by which such agreement can be achieved. The third task is most important. I want to make it quite clear that neither I nor His Majesty's Government have lost sight of the need for a long-term solution, and that the present proposals are intended to make a long-term solution easier.

III. Lord Wavell's Statement, Simla Conference, July 14, 1945.

Unfortunately, the Conference¹ was unable to agree about the strength and composition of the

¹ To the Simla Conference were summoned: “Those now holding office as Premier in a Provincial Government; and for Provinces now under Section 93 Government, those who last held the office of Premier;

Composition
of Simla
Conference.

The Leader of the Congress Party and the Deputy Leader of the Muslim League in the Central Assembly; the Leaders of the Congress Party and the Muslim League in the Council of State; also the Leaders of the Nationalist Party and the European Group in the Assembly.

Mr. Gandhi and Mr. Jinnah as the recognised leaders of the two main political parties.

Rao Bahadur N. Shiva Raj to represent the Scheduled classes.

Master Tara Singh to represent the Sikhs”.

No representative of the Hindu Mahasabha was invited.

Executive Council. and on the 29th June I undertook, with the approval of the Conference, to endeavour to produce a solution not based on any formula agreed in advance. I asked the parties to let me have lists of names, and said I would do what I could to produce a solution acceptable to the leaders and to the Conference.

I received lists from all parties represented here except from the European Group, who decided not to send a list, and the Muslim League. I was, however, determined that the Conference should not fail until I had made every possible effort to bring it to a successful ending. I therefore made my provisional selections including certain Muslim League names, and I have every reason to believe that if these selections had been acceptable here they would have been acceptable to His Majesty's Government.

My selections would, I think, have given a balanced and efficient Executive Council, whose composition would have been reasonably fair to all parties.

I did not find it possible, however, to accept the claims of any party in full. When I explained my solution to Mr. Jinnah he told me that it was not acceptable to the Muslim League and he was so decided that I felt it would be useless to continue the discussion.

In the circumstances I did not show my selections as a whole to Mr. Jinnah, and there was no object in showing them to the other leaders. The Conference has, therefore, failed.

Nobody can regret this more than I do myself. I wish to make it clear that the responsibility for the failure is mine. The main idea underlying the Conference was mine. If it had succeeded its success could have been attributed to me and I cannot place the blame for its failure upon any of the parties.

Attempt to
form "a
balanced
and
efficient
Executive
Council"

Jinnah's
refusal
to accept
Wavell's
list

IV. Mr. Jinnah's Statement, Press Conference, Simla, July 14, 1945.

On a final examination and analysis of the Wavell plan, we found that it was a snare. There was the combination consisting of Gandhi-Hindu Congress, who stand for India's Hindu national independence as one India, and the latest exponent of geographical unity, Lord Wavell¹, and Glancy²-Khizr³, who are bent upon creating disruption among the Mussalmans in the Punjab. We are sought to be pushed into this arrangement, by which, if we had agreed to, as proposed by Lord Wavell, we would have signed our death warrant.

Wavell plan
"was a
snare".

* * * *

. . . if we accept this arrangement, the Pakistan issue will be shelved and put in cold storage indefinitely whereas the Congress will have secured under this arrangement what they want, namely a clear road for their advance towards securing Hindu national independence of India, because the future Executive will work as a unitary Government of India, and we know that this interim or provisional arrangement will have a way of settling down for an unlimited period and all the forces in the proposed Executive plus the known policy of the British Government and Lord Wavell's strong inclination for a united India would completely jeopardize us . . .

Pakistan
"shelved
and put
in cold
storage
indefinitely"

Next, in the proposed Executive, we would be reduced to a minority of one-third. All the other Minorities, such as the Scheduled Castes, Sikhs and Christians, have the same goal as the Congress. They have their grievances as Minorities, but their goal and ideology is and cannot be different from or otherwise than that of a united India. Ethnically

All
Minorities
have the
same
goal as the
Congress.

¹ See Document No. 21.

² Sir Bertrand Glancy, Governor of the Punjab.

³ Malik Khizr Hyat Khan, Chief Minister of the Punjab.

No safe-guard for Muslims except Viceroy's veto

and culturally, they are very closely knitted to Hindu society. I am not against full justice being done to all the Minorities and they should be fully safeguarded and protected as such, wherever they may be. But in actual working and practice, invariably, their vote will be against us, and there is no safeguard for us except the Viceroy's veto, which, it is well-known to any constitutionalist, cannot be exercised lightly as everyday business against majority decisions with regard to the policy and the principles that will have to be laid down and measures adopted, both administrative and legislative.

Congress and Malik Khizr Hyat claimed share in Muslim representation in Executive Council.

On top of this came the last straw on the camel's back, that even about the five members of the Muslim bloc allotted to us communalwise, which is the essence of the Wavell proposals, we were told that the Muslim League was not entitled to nominate all the Muslim representatives as our chosen spokesmen; and there were two claimants—the Congress which claimed two, and Glancy-Khizr on behalf of the Punjab claimed one. This move on the part of these two went at the very root and the very existence of the Muslim League regarding its position, character and status. But finally we broke as Lord Wavell insisted upon his having one non-Leaguer nominee of Malik Khizr Hyat representing the Punjab Muslims . . . it is only the blind who cannot see that the All-India Muslim League is the only authoritative representative organization of the Mussulmans . . .

V. Statement of Maulana Abul Kalam Azad¹, Press Conference, Simla, July 14, 1945.

Conditions for Congress co-operation

Maulana Azad explained the talks he had with the Viceroy on June 24 when he placed the Congress point of view before him. He said that he emphasised that (1) the present arrangement was purely temporary and interim, (2) it was a preliminary step

¹ President of the Indian National Congress.

to the goal of independence, and (3) the Working Committee wished to co-operate in every reasonable way.

Maulana Azad threw further light on other points that (1) every effort should be made to give national character to the Indian Army and to bring about cordiality between the National Army and the National Government and the people, and (2) the Indian Government could not support any policy which aimed at continuation of imperialist control of any of the countries in South-East Asia nor could it allow use of its resources in men and money.

Maulana Azad said that the Congress was prepared to accommodate the Muslim League consistently with its national policy. This would be made clear when the panel submitted by the Congress was officially released. Failure of the Conference, he added, was due to the uncompromising attitude taken by the League.

Failure of
Conference
due to
Muslim
League

"Two points arise out of the present position; the first is that the attitude of the Muslim League is responsible for the failure of the Conference and the second point which emerges from the situation is that after the refusal of the Muslim League the question naturally came before the Viceroy whether a forward step should be taken or not. The Viceroy decided not to take it for the present", observed Maulana Azad.

Maulana Azad said that he had made it clear to the Viceroy that the Congress was prepared to go forward and if a certain group wished to keep out it might be left out.

"With a faltering step and wavering mind we cannot cover our destination", remarked Maulana Azad.

"It is good to think twice before taking a step forward. But when the step has already been taken hesitation is not virtue but weakness. If the British Government wished to give shape to things they should have realised the communal condition. They

British
Govern-
ment gave
Muslim
League the
right of
veto.

should have been prepared not to surrender the right of veto to any group and thus block the path of progress", Maulana Azad said.

24. ANNOUNCEMENT OF LORD PETHICK-LAWRENCE¹, FEBRUARY 19, 1946.

The House² will recall that on 19th September, 1945, on his return to India after discussions with the British Government, the Viceroy made a statement of policy³ in the course of which he outlined the positive steps to be taken immediately after the Central and Provincial elections to promote, in conjunction with leaders of Indian opinion, early realisation of full self-government in India.

Steps for
"early reali-
sation of
full self-
government
in India"

Those steps include: first, preparatory discussions with elected representatives of British India and with Indian States in order to secure the widest measure of agreement as to the method of framing a Constitution; second, the setting up of a constitution-making body; and third, the bringing into being of an Executive Council having the support of the main Indian parties.

Elections

Elections at the Centre were held at the end of last year and in some of the Provinces they are also over and responsible Governments are in the process

¹ Secretary of State for India in Mr. Attlee's Cabinet.

² House of Lords.

Wavell's
statement

³ In this statement Lord Wavell expressed the hope that "ministerial responsibility will be accepted by political leaders in all Provinces" on the conclusion of elections to the Central and Provincial Legislatures during the cold weather of 1945-46. He added, "It is the intention of His Majesty's Government to convene as soon as possible a constitution-making body.....H.M.G. are proceeding to the consideration of the content of the treaty which will require to be concluded between Great Britain and India.....H.M.G.....authorised me, as soon as the results of the Provincial elections are published, to take steps to bring into being an Executive Council which will have the support of the main Indian parties."

of formation. In other Provinces polling dates are spread over the next few weeks. With the approach of the end of the electoral campaign, the British Government have been considering the most fruitful method of giving effect to the programme to which I have referred.

In view of the paramount importance, not only to India and to the British Commonwealth but to the peace of the world, of a successful outcome of discussions with leaders of Indian opinion the British Government have decided with the approval of His Majesty the King to send out to India a special mission of Cabinet Ministers consisting of the Secretary of State of India (Lord Pethick-Lawrence), the President of the Board of Trade (Sir Stafford Cripps) and the First Lord of the Admiralty (Mr. A. V. Alexander) to act in association with the Viceroy in this matter.

Composition
of Cabinet
Mission

This decision has full concurrence of Lord Wavell.

25. SPEECH OF MR. ATTLEE¹, HOUSE OF COMMONS, MARCH 15, 1946.

I am quite certain that at the present time the tide of nationalism is running very fast in India and, indeed, all over Asia. One always has to remember that India is affected by what happens elsewhere in Asia. . . . To-day I think that national idea has spread right through and not least, perhaps, among some of those soldiers who have given such wonderful service in the war. I should like to-day, therefore, not to stress too much the differences between Indians. Let us all realise that whatever the difficulties, whatever the divisions may be, there is the underlying demand among all the Indian peoples.

Differences
between
Indians
should not
be stressed
too much.

* * * *

India herself must choose what will be her future Constitution; what will be her position in the world.

¹ Prime Minister of England.

India must
choose her
own Consti-
tution.

Value of
membership
of Common-
wealth

India has a
right to
choose
independ-
ence outside
the
Common-
wealth.

India is "a
congeries
of races,
religions
and
languages".

A Minority
cannot veto
the advance
of the
Majority.

Problem of
Princely
States

I hope that the Indian people may elect to remain within the British Commonwealth. I am certain that she will find great advantages in doing so. In these days that demand for complete, isolated nationhood, apart from the rest of the world, is really outdated. Unity may come through the United Nations, or through the Commonwealth, but no great nation can stand alone without sharing in what is happening in the world. But if she does so elect, it must be by her own free will. The British Commonwealth and Empire is not bound together by chains of external compulsion. It is a free association of free peoples. If, on the other hand, she elects for independence, in our view she has a right to do so. It will be for us to help to make the transition as smooth and easy as possible.

* * * *

I am well aware, when I speak of India, that I speak of a country containing a congeries of races, religions and languages, and I know well all the difficulties thereby created. But those difficulties can only be overcome by Indians. We are very mindful of the rights of Minorities and Minorities should be able to live free from fear. On the other hand, we cannot allow a Minority to place a veto on the advance of the Majority.

* * * *

There is the problem of the Indian States. . . . I hope that the statesmen of British India and of princely India will be able to work out a solution of the problem of bringing together, in one great polity, these disparate constituent parts. There again, we must see that the Indian States find their due place, there can be no positive veto on advance, and I do not believe for a moment that the Indian princes would desire to be a bar to the forward march of India. But, as in the case of any other problems, this is a matter that Indians will settle themselves.

I am very well aware, as we all are, of the Minority problems in India, and I think that Indian

same time, retain over here responsibility for the treatment of Minorities and the power to intervene in their behalf.

We are mindful, too, of the position of the Services—the men who have done great service to India and the position of their families. I think India should be sensible of the responsibility she has towards those who have served her, and I think that a Government which takes over, so to speak, the assets of our Government will also have to take over the liabilities. There again, that is a point to be dealt with later on. It does not concern the immediate purpose of setting up what I have called the instrument of decision. I entirely agree with what the right hon. gentleman said with regard to the Treaty.¹ That Treaty is primarily for India. We are not going to hang out for anything for our own advantage which would be a disadvantage to India.

Position
of the
Services

Indo-
British
Treaty

26. MUSLIM LEAGUE MEMORANDUM TO CABINET MISSION, MAY 12, 1946.

Principles to be agreed to as our offer:

1. The six Muslim Provinces (Punjab, N.-W. F. P., Baluchistan, Sind, Bengal and Assam) shall be grouped together as one Group and will deal with all other subjects and matters except Foreign Affairs, Defence and Communications necessary for Defence, which may be dealt with by the constitution-making bodies of the two Groups of Provinces—Muslim Provinces (hereinafter named Pakistan Group) and Hindu Provinces—sitting together.

Group of
"six Muslim
Provinces"

2. There shall be a separate constitution-making body for the six Muslim Provinces named above, which will frame constitutions for the Group and

¹ Mr. Butler speaking on behalf of the Conservatives said, ".....we should not seek in that treaty to provide for any thing incompatible with the interests of India".

How Consti-
tution for
Pakistan
Group is
to be
framed

the Provinces in the Group and will determine the list of subjects that shall be Provincial and Central (of the Pakistan Federation) with residuary sovereign powers vesting in the Provinces.

3. The method of election of the representatives to the constitution-making body will be such as would secure proper representation to the various communities in proportion to their population in each Province of the Pakistan Group.

4. After the constitutions of the Pakistan Federal Government and the Provinces are finally framed by the constitution-making body it will be open to any Province of the Group to decide to opt out of its Group, provided the wishes of the people of that Province are ascertained by a referendum to opt out or not.

Arrange-
ments for
Union

5. It must be open to discussion in the joint constitution-making body as to whether the Union will have a Legislature or not. The method of providing the Union with finance should also be left for the decision of the joint meeting of the two constitution-making bodies, but in no event shall it be by means of taxation.

6. There should be parity of representation between the two Groups of Provinces in the Union Executive and the Legislature, if any.

Special pro-
vision for
communal
issues

7. No major point in the constitution which affects the communal issue shall be deemed to be passed in the joint constitution-making body, unless the majority of the members of the constitution-making body of the Hindu Provinces and the majority of the members of the constitution-making body of the Pakistan Group, present and voting, are separately in its favour.

8. No decision, legislative, executive or administrative, shall be taken by the Union in regard to any matter of controversial nature, except by a majority of three-fourths.

9. In Group and Provincial Constitutions fundamental rights and safeguards concerning religion, culture and other matters affecting the different communities will be provided for.

10. The Constitution of the Union shall contain a provision whereby any Province can, by a majority vote of its Legislative Assembly, call for reconsideration of the terms of the Constitution, and will have the liberty to secede from the Union at any time after an initial period of ten years.

Secession
from
Union

These are the principles of our offer for a peaceful and amicable settlement and this offer stands in its entirety and all matters mentioned herein are interdependent.

27. CONGRESS SUGGESTIONS TO CABINET MISSION, MAY 12, 1946.

1. The Constituent Assembly is to be formed as follows:—

- (i) Representatives shall be elected by each Provincial Assembly by proportional representation (single transferable vote). The number so elected should be one-fifth of the number of members of the Assembly and they may be members of the Assembly or others.

Composi-
tion of
Consti-
tuent
Assembly

- (ii) Representatives from the States on the basis of their population in proportion to the representation from British India. How these representatives are to be chosen is to be considered later.

2. The Constituent Assembly shall draw up a Constitution for the Federal Union. This shall consist of an All-India Federal Government and Legislature dealing with Foreign Affairs, Defence, Communications, Fundamental Rights, Currency, Customs and Planning as well as such other subjects

Powers
of the
Centre

as, on closer scrutiny, may be found to be intimately allied to them. The Federal Union will have necessary powers to obtain for itself the finances it requires for these subjects and the power to raise revenues in its own right. The Union must also have power to take remedial action in cases of breakdown of the Constitution and in grave public emergencies.

3. All the remaining powers will vest in the Provinces or Units.

Groups

4. Groups of Provinces may be formed and such Groups may determine the Provincial subjects which they desire to take in common.

Provincial
Constitutions

5. After the Constituent Assembly has decided the Constitution for the All-India Federal Union as laid down in paragraph 2 above, the representatives of the Provinces may form Groups to decide the Provincial Constitutions for their Group and, if they wish, a Group Constitution.

Communal
issues

6. No major point in the All-India Federal Constitution which affects the communal issue shall be passed by the Constituent Assembly unless a majority of the members of the community or communities connected present in the Assembly and voting are separately in its favour provided that in case there is no agreement on any such issue it will be referred to arbitration. In case of doubt as to whether any point is a major communal issue the Speaker will decide, or, if so desired, it may be referred to the Federal Court.

7. In the event of a dispute arising in the process of constitution-making, the specific issue shall be referred to arbitration.

Revision of
Constitutions

8. The Constitution should provide machinery for its revision at any time subject to such checks as may be devised. If so desired, it may be specifically stated that this whole Constitution may be reconsidered after ten years.

28. STATEMENT BY THE CABINET MISSION AND THE VICEROY, MAY 16, 1946.

1. On the 15th March last, just before the despatch of the Cabinet Mission to India, Mr. Attlee, the British Prime Minister, used these words:—

“My colleagues are going to India with the intention of using their utmost endeavours to help her to attain her freedom as speedily and fully as possible. What form of Government is to replace the present regime is for India to decide; but our desire is to help her to set up forthwith the machinery for making that decision. . . .

Attlee's
statement
on object
of Cabinet
Mission

I hope that India and her people may elect to remain within the British Commonwealth. I am certain that they will find great advantages in doing so. . . .

But if she does so elect, it must be by her own free will. The British Commonwealth and Empire is not bound together by chains of external compulsion. It is a free association of free peoples. If, on the other hand, she elects for independence, in our view she has a right to do so. It will be for us to help to make the transition as smooth and easy as possible.”

2. Charged in these historic words, we—the Cabinet Ministers and the Viceroy—have done our utmost to assist the two main political parties to reach agreement upon the fundamental issue of the unity or division of India. After prolonged discussions in New Delhi we succeeded in bringing the Congress and the Muslim League together in Conference at Simla. There was a full exchange of views and both parties were prepared to make considerable concessions in order to try to reach a settlement, but it ultimately proved impossible to close the remainder of the gap between the parties and so no agreement could be concluded. Since no agreement has been reached, we feel that it is our

No agree-
ment
between
Congress
and Muslim
League

duty to put forward what we consider are the best arrangements possible to ensure a speedy setting up of the new constitution. This statement is made with the full approval of His Majesty's Government in the United Kingdom.

Arrange-
ments to be
made for
(1) framing
of Consti-
tutions,
(2) setting
up of
Interim
Govern-
ment.

3. We have accordingly decided that immediate arrangements should be made whereby Indians may decide the future Constitution of India, and an interim Government may be set up at once to carry on the administration of British India until such time as a new Constitution can be brought into being. We have endeavoured to be just to the smaller as well as to the larger sections of the people; and to recommend a solution which will lead to a practicable way of governing the India of the future, and will give a sound basis for defence and a good opportunity for progress in the social, political and economic field.

"Universal
desire... for
the unity of
India" .

4. It is not intended in this statement to review the voluminous evidence that has been submitted to the Mission; but it is right that we should state that it has shown an almost universal desire, outside the supporters of the Muslim League, for the unity of India¹.

Muslim
demand for
partition

5. This consideration did not, however, deter us from examining closely and impartially the possibility of a partition of India; since we were greatly impressed by the very genuine and acute anxiety of the Muslims lest they should find themselves subjected to a perpetual Hindu-majority rule. This

Suggestions
of Commu-
nist Party

¹ In a memorandum submitted to the Cabinet Mission the Communist Party suggested that India should be divided into 'linguistically and culturally homogeneous National Units', each of which should have 'the right to decide freely whether they join the Union (of India) or form a separate sovereign state or another Indian Union', and added: "The Communist Party stands for a free voluntary democratic Indian Union of sovereign Units. It is firmly convinced that the best interests of the Indian masses will be served

feeling has become so strong and widespread amongst the Muslims that it cannot be allayed by mere paper safeguards. If there is to be internal peace in India it must be secured by measures which will assure to the Muslims a control in all matters vital to their culture, religion, and economic or other interests.

6. We therefore examined in the first instance the question of a separate and fully independent sovereign State of Pakistan as claimed by the Muslim League. Such a Pakistan would comprise two areas; one in the north-west consisting of the Provinces of the Punjab, Sind, North-West Frontier, and British Baluchistan; the other in the north-east consisting of the Provinces of Bengal and Assam. The League were prepared to consider adjustment of boundaries at a later stage, but insisted that the principle of Pakistan should first be acknowledged. The argument for a separate State of Pakistan was based, first, upon the right of the Muslim majority to decide their method of government according to their wishes, and secondly, upon the necessity to include substantial areas in which Muslims are in a minority, in order to make Pakistan administratively and economically workable.

Territorial
extent of
Pakistan

The size of the non-Muslim minorities in a Pakistan comprising the whole of the six Provinces enumerated above would be very considerable as the following figures¹ show:—

by their remaining together in one common Union....." In a memorandum submitted to the Cabinet Mission the Hindu Mahasabha declared that the 'integrity and indivisibility' of India 'must be maintained' and added, "No community in India can rightfully claim to constitute a nation, much less a sovereign nation, with a separate homeland of its own". In a memorandum submitted to the Cabinet Mission the Akali party 'made it plain that the Sikhs were opposed to any possible partition of India'.

¹ All population figures in this statement are from the most recent census taken in 1941.

North-Western Area—

Size of non-Muslim minorities in Pakistan			Muslim.	Non-Muslim.
	Punjab		16,217,242	12,201,577
	North-West Frontier Province		2,788,797	249,270
	Sind		3,208,325	1,326,683
	British Baluchistan		438,930	62,701
			22,653,294	13,840,231
			62.07%	37.93%

North-Eastern Area—

Bengal		33,005,434	27,301,091
Assam		3,442,479	6,762,254
		36,447,913	34,063,345
		51.69%	48.31%

The Muslim minorities in the remainder of British India number some 20 million dispersed amongst a total population of 188 million.

No justification for inclusion of whole of Punjab, Bengal and Assam in Pakistan

These figures show that the setting up of a separate sovereign State of Pakistan on the lines claimed by the Muslim League would not solve the communal minority problem; nor can we see any justification for including within a sovereign Pakistan those districts of the Punjab and of Bengal and Assam in which the population is predominantly non-Muslim. Every argument that can be used in favour of Pakistan can equally, in our view, be used in favour of the exclusion of the non-Muslim areas from Pakistan. This point would particularly affect the position of the Sikhs.

7. We therefore considered whether a smaller sovereign Pakistan confined to the Muslim majority areas alone might be a possible basis of compromise. Such a Pakistan is regarded by the Muslim League as quite impracticable because it would entail the

exclusion from Pakistan of (a) the whole of the Ambala and Jullundur Divisions in the Punjab; (b) the whole of Assam except the district of Sylhet; and (c) a large part of Western Bengal, including Calcutta, in which city the percentage of the Muslim population is 23.6%. We ourselves are also convinced that any solution which involves a radical partition of the Punjab and Bengal, as this would do, would be contrary to the wishes and interests of a very large proportion of the inhabitants of these Provinces. Bengal and the Punjab each has its own common language and a long history and tradition. Moreover, any division of the Punjab would of necessity divide the Sikhs, leaving substantial bodies of Sikhs on both sides of the boundary. We have therefore been forced to the conclusion that neither a larger nor a smaller sovereign State of Pakistan would provide an acceptable solution for the communal problem.

Division of
Bengal and
Punjab
undesirable

Pakistan no
solution for
communal
problem

8. Apart from the great force of the foregoing arguments there are weighty administrative, economic and military considerations. The whole of the transportation and postal and telegraph systems of India have been established on the basis of a united India. To disintegrate them would gravely injure both parts of India. The case for a united defence is even stronger. The Indian Armed Forces have been built up as a whole for the defence of India as a whole, and to break them in two would inflict a deadly blow on the long traditions and high degree of efficiency of the Indian Army and would entail the gravest dangers. The Indian Navy and Indian Air Force would become much less effective. The two sections of the suggested Pakistan contain the two most vulnerable frontiers in India and for a successful defence in depth the area of Pakistan would be insufficient.

Other
arguments
against
Pakistan

9. A further consideration of importance is the greater difficulty which the Indian States would find

Princely
States

in associating themselves with a divided British India.

10. Finally, there is the geographical fact that the two halves of the proposed Pakistan State are separated by some seven hundred miles and the communications between them both in war and peace would be dependent on the goodwill of Hindustan.

Verdict
against
Pakistan

11. We are therefore unable to advise the British Government that the power which at present resides in British hands should be handed over to two entirely separate sovereign States.

12. This decision does not, however, blind us to the very real Muslim apprehensions that their culture and political and social life might become submerged in a purely unitary India, in which the Hindus with their greatly superior numbers must be a dominating element. To meet this the Congress have put forward a scheme under which Provinces would have full autonomy subject only to a minimum of Central subjects, such as Foreign Affairs, Defence and Communications.

Congress
scheme of
weak
Centre

Under this scheme Provinces, if they wished to take part in economic and administrative planning on a large scale, could cede to the Centre optional subjects in addition to the compulsory ones mentioned above.

13. Such a scheme would, in our view, present considerable constitutional disadvantages and anomalies. It would be very difficult to work a Central Executive and Legislature in which some Ministers, who dealt with compulsory subjects, were responsible to the whole of India while other Ministers, who dealt with optional subjects, would be responsible only to those Provinces which had elected to act together in respect of such subjects. This difficulty would be accentuated in the Central Legislature, where it would be necessary to exclude certain members from speaking and voting when subjects with

Criticism of
clarification
of Central
subjects as
(1) compulsory and
(2) optional

which their Provinces were not concerned were under discussion. Apart from the difficulty of working such a scheme, we do not consider that it would be fair to deny to other Provinces, which did not desire to take the optional subjects at the Centre, the right to form themselves into a Group for a similar purpose. This would indeed be no more than the exercise of their autonomous powers in a particular way.

14. Before putting forward our recommendations we turn to deal with the relationship of the Indian States to British India. It is quite clear that with the attainment of independence by British India, whether inside or outside the British Commonwealth, the relationship which has hitherto existed between the Rulers of the States and the British Crown will no longer be possible. Paramountcy can neither be retained by the British Crown nor transferred to the new Government. This fact has been fully recognised by those whom we interviewed from the States. They have at the same time assured us that the States are ready and willing to co-operate in the new development of India. The precise form which their co-operation will take must be a matter for negotiation during the building up of the new constitutional structure, and it by no means follows that it will be identical for all the States. We have not therefore dealt with the States in the same detail as the Provinces of British India in the paragraphs which follow.

Princely
States

"Paramountcy can neither be retained by the British Crown nor transferred to the new Government".

15. We now indicate the nature of a solution which in our view would be just to the essential claims of all parties, and would at the same time be most likely to bring about a stable and practicable form of Constitution for All-India.

We recommend that the Constitution should take the following basic form:—

- (1) There should be a Union of India, embracing both British India and the States, which should deal with the following

"Basic form" of Constitution recom-

mended by
Cabinet
Mission

subjects: Foreign Affairs, Defence, and Communications; and should have the powers necessary to raise the finances required for the above subjects.

Centre

- (2) The Union should have an Executive and a Legislature constituted from British Indian and States' representatives. Any question raising a major communal issue in the Legislature should require for its decision a majority of the representatives present and voting of each of the two major communities as well as a majority of all the members present and voting.

Provinces
and Princely
States

- (3) All subjects other than the Union subjects and all residuary powers should vest in the Provinces.

- (4) The States will retain all subjects and powers other than those ceded to the Union.

- (5) Provinces should be free to form Groups with Executives and Legislatures, and each Group could determine the Provincial subjects to be taken in common.

- (6) The Constitutions of the Union and of the Groups should contain a provision whereby any Province could, by a majority vote of its Legislative Assembly, call for a reconsideration of the terms of the Constitution after an initial period of 10 years and at 10 yearly intervals thereafter.

Revision of
Consti-
tution

16. It is not our object to lay out the details of a Constitution on the above lines, but to set in motion the machinery, whereby a Constitution can be settled by Indians for Indians.

It has been necessary however for us to make this recommendation as to the broad basis of the future Constitution because it became clear to us in the course of our negotiations that not until that

had been done was there any hope of getting the two major communities to join in the setting up of the constitution-making machinery.

17. We now indicate the constitution-making machinery which we propose should be brought into being forthwith in order to enable a new Constitution to be worked out.

18. In forming any assembly to decide a new constitutional structure the first problem is to obtain as broad-based and accurate a representation of the whole population as is possible. The most satisfactory method obviously would be by election based on adult franchise, but any attempt to introduce such a step now would lead to a wholly unacceptable delay in the formulation of the new constitution. The only practicable alternative is to utilise the recently elected Provincial Legislative Assemblies as electing bodies. There are, however, two factors in their composition which make this difficult. First, the numerical strengths of the Provincial Legislative Assemblies do not bear the same proportion to the total population in each Province. Thus, Assam with a population of 10 millions has a Legislative Assembly of 108 members, while Bengal, with a population six times as large, has an Assembly of only 250. Secondly, owing to the weightage given to minorities by the Communal Award, the strengths of the several communities in each Provincial Legislative Assembly are not in proportion to their numbers in the Province. Thus the number of seats reserved for Muslims in the Bengal Legislative Assembly is only 48% of the total, although they form 55% of the provincial population. After a most careful consideration of the various methods by which these points might be corrected, we have

Difficulty of utilising Provincial Legislative Assemblies as "electing bodies" for Constituent Assembly

come to the conclusion that the fairest and most practicable plan would be :—

Cabinet
Mission
formula

- (a) to allot to each Province a total number of seats proportional to its population, roughly in the ratio of one to a million, as the nearest substitute for representation by adult suffrage;
- (b) to divide this provincial allocation of seats between the main communities in each Province in proportion to their population;
- (c) to provide that the representatives allotted to each community in a Province shall be elected by the members of that community in its Legislative Assembly.

We think that for these purposes it is sufficient to recognise only three main communities in India : General, Muslim, and Sikh, the "General" community including all persons who are not Muslims or Sikhs. As the smaller Minorities would, upon the population basis, have little or no representation since they would lose the weightage which assures them seats in the Provincial Legislatures, we have made the arrangements set out in paragraph 20 below to give them a full representation upon all matters of special interest to Minorities.

Composi-
tion of
Constituent
Assembly

19. (i) We therefore propose that there shall be elected by each Provincial Legislative Assembly the following numbers of representatives, each part of the Legislative Assembly (General, Muslim or Sikh) electing its own representatives by the method of proportional representation with single transferable vote :—

Table of Representation

SECTION A

Province		General	Muslim	Total
Madras	..	45	4	49
Bombay	..	19	2	21
United Provinces	..	47	8	55
Bihar	..	31	5	36
Central Provinces	..	16	1	17.
Orissa	..	9	0	9
<i>Total</i>	..	<u>167</u>	<u>20</u>	<u>187</u>

SECTION B

Province		General	Muslim	Sikh	Total
Punjab	..	8	16	4	28
N.-W. Frontier Province		0	3	0	3
Sind		1	3	0	4
<i>Total</i>		<u>9</u>	<u>22</u>	<u>4</u>	<u>35</u>

SECTION C

Province		General	Muslim	Total
Bengal	..	27	33	60
Assam	..	7	3	10
<i>Total</i>	..	<u>34</u>	<u>36</u>	<u>70</u>

Total for British India 292

Maximum for Indian States 93

Total .. 385

Note.—In order to represent the Chief Commissioners' Provinces there will be added to Section A the Member representing Delhi in the Central Legislative Assembly, the Member representing Ajmer-Merwara in the Central Legislative Assembly, and a

representative to be elected by the Coorg Legislative Council.

To Section B will be added a representative of British Baluchistan.

Representa-
tion of
Princely
States in
Constituent
Assembly

(ii) It is the intention that the States would be given in the final Constituent Assembly appropriate representation which would not, on the basis of the calculation of population adopted for British India, exceed 93; but the method of selection will have to be determined by consultation. The States would in the preliminary stage be represented by a Negotiating Committee.

(iii) Representatives thus chosen shall meet at New Delhi as soon as possible.

Procedure
of work in
Constituent
Assembly

(iv) A preliminary meeting will be held at which the general order of business will be decided, a Chairman and other officers elected, and an Advisory Committee (see paragraph 20 below) on the rights of citizens, Minorities, and Tribal and Excluded Areas set up. Thereafter the Provincial representatives will divide up into the three Sections shown under A, B, and C in the Table of Representation in subparagraph (i) of this paragraph.

(v) These Sections shall proceed to settle the Provincial Constitutions for the Provinces included in each Section, and shall also decide whether any Group Constitution shall be set up for those Provinces and, if so, with what Provincial subjects the Group should deal. Provinces shall have the power to opt out of the Groups in accordance with the provisions of sub-clause (viii) below.

(vi) The representatives of the Sections and the Indian States shall reassemble for the purpose of settling the Union Constitution.

(vii) In the Union Constituent Assembly resolutions varying the provisions of paragraph 15 above

or raising any major communal issue shall require a majority of the representatives present and voting of each of the two major communities. The Chairman of the Assembly shall decide which, if any, resolutions raise major communal issues and shall, if so requested by a majority of the representatives of either of the major communities, consult the Federal Court before giving his decision.

(viii) As soon as the new constitutional arrangements have come into operation, it shall be open to any Province to elect to come out of any Group in which it has been placed. Such a decision shall be taken by the new Legislature of the Province after the first general election under the new constitution.

Secession
from
Group

20. The Advisory Committee on the rights of citizens, Minorities and Tribal and Excluded Areas should contain due representation of the interests affected, and their function will be to report to the Union Constituent Assembly upon the list of Fundamental Rights, clauses for protecting Minorities, and a scheme for the administration of the Tribal and Excluded Areas, and to advise whether these rights should be incorporated in the Provincial, Group, or Union Constitutions.

Funda-
mental
Rights,
rights of
Minorities,
etc.

21. His Excellency the Viceroy will forthwith request the Provincial Legislatures to proceed with the election of their representatives and the States to set up a Negotiating Committee.

It is hoped that the process of constitution-making can proceed as rapidly as the complexities of the task permit so that the interim period may be as short as possible.

22. It will be necessary to negotiate a treaty between the Union Constituent Assembly and the United Kingdom to provide for certain matters arising out of the transfer of power.

Indo-British
Treaty

“Interim Government having the support of the major political parties”

23. While the constitution-making proceeds, the administration of India has to be carried on. We attach the greatest importance therefore to the setting up at once of an interim Government having the support of the major political parties. It is essential during the interim period that there should be the maximum of co-operation in carrying through the difficult tasks that face the Government of India. Besides the heavy tasks of day-to-day administration, there is the grave danger of famine to be countered, there are decisions to be taken in matters of post-war development which will have a far-reaching effect on India's future and there are important international conferences in which India has to be represented. For all these purposes a Government having popular support is necessary. The Viceroy has already started discussions to this end, and hopes soon to form an interim Government in which all the portfolios, including that of War Member, will be held by Indian leaders having the full confidence of the people. The British Government, recognising the significance of the changes, will give the fullest measure of co-operation to the Government so formed in the accomplishment of its tasks of administration and in bringing about as rapid and smooth a transition as possible.

24. To the leaders and people of India, who now have the opportunity of complete independence, we would finally say this. We and our Government and countrymen hoped that it would be possible for the Indian people themselves to agree upon the method of framing the new Constitution under which they will live. Despite the labours which we have shared with the Indian parties, and the exercise of much patience and goodwill by all, this has not been possible. We therefore now lay before you proposals which, after listening to all sides and after much earnest thought we trust, will enable you to attain your independence in the shortest time and

with the least danger of internal disturbance and conflict. These proposals may not, of course, completely satisfy all parties, but you will recognise with us that, at this supreme moment in Indian history, statesmanship demands mutual accommodation and we ask you to consider the alternative to the acceptance of these proposals. After all the efforts which we and the Indian parties have made together for agreement, we must state that, in our view, there is small hope of peaceful settlement by agreement of the Indian parties alone. The alternative would therefore be a grave danger of violence, chaos, and even civil war. The result and duration of such a disturbance cannot be foreseen, but it is certain that it would be a terrible disaster for many millions of men, women and children. This is a possibility which must be regarded with equal abhorrence by the Indian people, our own countrymen, and the world as a whole. We therefore lay these proposals before you in the profound hope that they will be accepted and operated by you in the spirit of accommodation and goodwill in which they are offered. We appeal to all who have the future good of India at heart to extend their vision beyond their own community or interest to the interests of the whole 400 millions of Indian people.

We hope that the new independent India may choose to be a member of the British Commonwealth. We hope, in any event, that you will remain in close friendly association with our people. But these are matters for your own free choice. Whatever that choice may be, we look forward with you to your ever-increasing prosperity among the great nations of the world and to a future even more glorious than your past.

29. RESOLUTION OF MUSLIM LEAGUE COUNCIL, JUNE 6, 1946.

1. This meeting of the Council of the All-India Muslim League, after having carefully considered

Peaceful settlement by agreement of Indian parties is not possible.

Alternative to Cabinet Mission Plan : "violence, chaos and even civil war".

the statement issued by the Cabinet Mission and H. E. the Viceroy on May 16 and other relevant statements and documents officially issued in connection therewith, and after having examined the proposals set forth in the said statement in all their bearings and implications, places on record the following views for the guidance of the nation and direction to the Working Committee :

Cabinet Mission's statements on Pakistan are "unwarranted, unjustified and unconvincing"

Inconsistencies in Cabinet Mission statement

2. That the references made and the conclusions recorded in paragraphs 6, 7, 8, 9, 10 and 11 of the statement concerning Muslim demand for the establishment of a full sovereign Pakistan as the only solution of the Indian constitutional problem are unwarranted, unjustified and unconvincing and should not therefore have found place in a State document issued on behalf and with the authority of British Government. These paragraphs are couched in such language, and contain such mutilations of established facts, that the Cabinet Mission have clearly been prompted to include them in their statement solely with the object of appeasing the Hindus, in utter disregard of Muslim sentiments. Furthermore, the contents of the aforesaid paragraphs are in conflict and inconsistent with the admissions made by the Mission themselves in paragraphs 5 and 12 of their statement which are to the following effect :—First, the Mission 'were greatly impressed by the very genuine and acute anxiety of the Muslims lest they should find themselves subject to a perpetual Hindu majority rule.' Second, 'this feeling has become so strong and wide-spread amongst the Muslims that it cannot be allayed by mere paper safeguards.' Third, 'if there is to be internal peace in India it must be secured by measures which will assure to the Muslims a control in all matters vital to their culture, religion, economic or other interests.' Fourth, 'very real Muslim apprehensions exist that their culture and political

and social life might become submerged in a purely unitary India, in which the Hindus, with their greatly superior numbers, must be the dominating element.' In order that there may be no manner of doubt in any quarter, the Council of the All-India Muslim League reiterates that the attainment of the goal of a complete sovereign Pakistan still remains the unalterable objective of the Muslims in India for the achievement of which they will, if necessary, employ every means in their power and consider no sacrifice or suffering too great.

Goal of
Pakistan
reiterated

3. That notwithstanding the affront offered to Muslim sentiments by a choice of injudicious words in the preamble to the statement of the Cabinet Mission, the Muslim League, having regard to the grave issues involved, and prompted by its earnest desire for a peaceful solution, if possible, of the Indian constitutional problem, and inasmuch as the basis and the foundation of Pakistan are inherent in the Mission's plan by virtue of the compulsory Grouping of the six Muslim Provinces in Sections B and C, is willing to co-operate with the constitution-making machinery proposed in the scheme outlined by the Mission, in the hope that it would ultimately result in the establishment of complete sovereign Pakistan and in the consummation of the goal of independence for the major nations, Muslims and Hindus, and all the other people inhabiting the vast sub-continent.

"Basis and
foundation
of Pakistan
inherent in
Mission's
plan"

Compulsory
Grouping of
Provinces

It is for these reasons that the Muslim League is accepting the scheme and will join the constitution-making body and will keep in view the opportunity and right of secession of Provinces or Groups from the Union which have been provided in the Mission's plan by implication. The ultimate attitude of the Muslim League will depend on the final outcome of the labours of the constitution-making body and on the final shape of the Constitutions which may emerge

Muslim
League
will join
Constituent
Assembly.

from the deliberations of that body jointly and separately in its three Sections. The Muslim League also reserves the right to modify and revise the policy and attitude set forth in this resolution at any time during the progress of deliberations of the constitution-making body, or the Constituent Assembly, or thereafter if the course of events so require, bearing in mind the fundamental principles and ideals hereinbefore adumbrated, to which the Muslim League is irrevocably committed.

4. That with regard to the arrangements for the proposed Interim Government at the Centre, this Council authorises its President to negotiate with H. E. the Viceroy and to take such decisions and actions as he deems fit and proper.

Interim
Government

30. RESOLUTION OF CONGRESS WORKING COMMITTEE, JUNE 26, 1946.

The kind of independence Congress has aimed at is the establishment of a united, democratic Indian federation, with a Central authority, which would command respect from the nations of the world, maximum provincial autonomy, and equal rights for all men and women in the country. The limitation of the Central authority as contained in the proposals, as well as the system of Grouping of Provinces, weakened the whole structure and was unfair to some Provinces, such as the N. W. F. Province and Assam, and to some of the Minorities, notably the Sikhs. The Committee disapproved of this. They felt, however, that, taking the proposals as a whole, there was sufficient scope for enlarging and strengthening the Central authority and for fully ensuring the right of a Province to act according to its choice in regard to Grouping, and to give protection to such Minorities as might otherwise be placed at a disadvantage. Certain other objections were also raised on their behalf, notably the possibility of non-nationals taking

Criticism
of Cabinet
Mission
Plan

Scope for
improvement

any part in the constitution-making. It is clear that it would be a breach of both the letter and spirit of the statement of May 16 if any non-Indian participated in the voting or stood for election to the Constituent Assembly.

In the proposals for an Interim Government¹ contained in the statement of June 16 the defects related to matters of vital concern to the Congress.... The Provisional Government must have power and authority and responsibility and should function in fact, if not in law, as a *de facto* independent Government leading to the full independence to come. The members of such a Government can only hold themselves responsible to the people and not to any external authority. In the formation of a Provisional or other Government Congressmen can never give up the national character of the Congress, or accept an artificial and unjust parity, or agree to the veto of a communal group. The Committee are unable to accept the proposals for the formation of an Interim Government as contained in the statement of June 16.

Plan for
Interim
Govern-
ment
rejected

The Committee have, however, decided that the Congress would join the proposed Constituent Assembly, with a view to framing the Constitution of a free, united and democratic India.

Congress
would join
Constituent
Assembly.

¹ Lord Wavell invited the following persons to serve as members of the Interim Government: Sardar Baldev Singh (Sikh), Sir N. P. Engineer (Parsi, not connected with any political party), Mr. Jagjivan Ram (Congress: Scheduled Caste), Pandit Jawaharlal Nehru (Congress), Mr. M. A. Jinnah (Muslim League), Nawabzada Liaquat Ali Khan (Muslim League), Mr. H. K. Mahtab (Congress), Dr. John Matthai (Indian Christian, not connected with any political party), Nawab Mohammad Ismail Khan (Muslim League), Khwaja Sir Nazimuddin (Muslim League), Sardar Abdur Rab Nishtar (Muslim League), Mr. C. Rajagopalachari (Congress), Dr. Rajendra Prasad (Congress), Sardar Vallabhbhai Patel (Congress). The Viceroy, it was stated, "will arrange the distribution of portfolios in consultation with the leaders of the two major parties".

While the Committee have agreed to Congress participation in the Constituent Assembly, it is, in their opinion, essential that a representative and responsible Provisional National Government be formed at the earliest possible date. A continuation of authoritarian and unrepresentative Government can only add to the suffering of famishing masses and increased discontent. It will also put in jeopardy the work of the Constituent Assembly, which can only function in a free environment.

31. PANDIT NEHRU'S STATEMENT, PRESS CONFERENCE, BOMBAY, JULY 10, 1946.

Congress made no commitment regarding long-term or short-term plan except to go into Constituent Assembly.

Asked to amplify his statement in the A.-I.C.C. that the Congress had made no commitment in regard to either the long-term or the short-term plan except to go into the Constituent Assembly, Pandit Nehru said, "As a matter of fact, if you read the correspondence that has passed between the Congress President and the Cabinet Mission and the Viceroy, you will see in what conditions and circumstances we agreed to go into this Constituent Assembly. The first thing is that we have agreed to go into the Constituent Assembly and we have agreed to nothing else. It is true that in going to the Constituent Assembly, inevitably, we have agreed to a certain process of going into it, i.e., election of the candidates to the Constituent Assembly. What we do there, we are entirely and absolutely free to determine. We have committed ourselves to no single matter to anybody. Naturally, even though one might not agree to commit himself, there is a certain compulsion of facts which makes one accept this thing or that thing. I do not know what that might be in a political context. But the nature of compulsion of facts would be not of the British Government's desire or intents, but how to make the Assembly a success and how to avoid its breaking-up. That will be certainly a very import-

ant consideration. But the British Government does not appear there at all."

"When the Congress had stated that the Constituent Assembly was a sovereign body", Pandit Nehru said, "the Cabinet Mission's reply was more or less 'yes', subject to two considerations. Firstly, proper arrangement for Minorities and the other, a treaty between India and England. I wish the Cabinet Mission had stated both these matters are not controversial. It is obvious, the Minorities' question has to be settled satisfactorily. It is also obvious that if there is any kind of peaceful change-over in India, it is bound to result in some kind of treaty with Britain.

Sovereignty of Constituent Assembly subject to
(i) "proper arrangement for Minorities" and
(ii) treaty with Britain

What exactly that treaty will be I cannot say. But if the British Government presumes to tell us that they are going to hold anything in India because they do not agree either in regard to Minorities or in regard to the treaty, we shall not accept that position. It will become a *casus belli*. We shall have no treaty if they seek to impose anything upon us and we shall tear up any treaty they try to impose. If they treat us as equals and come to terms there will be a treaty. But if there is the slightest attempt at imposition, we shall have no treaty.

Congress will not tolerate
(i) British imposition regarding treaty or
(ii) British interference regarding Minorities.

In regard to the Minorities it is our problem and we shall no doubt succeed in solving it. We accept no outside interference in it—certainly not the British Government's interference in it—and therefore these two limiting factors to the sovereignty of the Constituent Assembly are not accepted by us.

How to make the job in the Constituent Assembly a success or not is the only limiting factor. It does not make the slightest difference what the Cabinet Mission thinks or does in the matter".

Referring to Grouping, Pandit Nehru said, "The big probability is that, from any approach to the question, there will be no Grouping. Obviously,

Grouping of Provinces

Assam

Section A will decide against Grouping. Speaking in betting language, there was 4 to 1 chance of the North-West Frontier Province deciding against Grouping. Then Group B collapses. It is highly likely that Assam will decide against Grouping with Bengal, although I would not like to say what the initial decision may be, since it is evenly balanced. But I can say with every assurance and conviction that there is going to be finally no Grouping there, because Assam will not tolerate it under any circumstances whatever. Thus you see this Grouping business approached from any point of view does not get on at all."

"Provincial
jealousies
would work
against
Grouping."

Pandit Nehru also explained how Provincial jealousies would work against Grouping. Firstly, he pointed out, "everybody outside the Muslim League was entirely opposed to Grouping. In regard to this matter the Muslim League stands by itself isolated. Applying that principle you will find in the North-West zone there is a kind of balance, more or less even, of pro-Grouping and anti-Grouping.

Secondly, entirely for other reasons, non-political, non-Congress, non-League, there is a good deal of feeling against Grouping with the Punjab both in the North-West Frontier Province and Sind for economic and other reasons. That is to say, even a Muslim Leaguer in Sind dislikes the idea of Grouping with the Punjab, because he fears that the Punjab will dominate Sind, the Punjab being a dominant party in that Group and more aggressive and advanced in some ways. Apart from the imposed discipline from the Muslim League, both in the Frontier and in Sind, the people are unanimously against Grouping because both these Provinces are afraid of being swamped by the Punjab."

Asked when the Provisional National Government would be formed at the Centre, Pandit Nehru

said : "I cannot just peep into the future and tell what is going to happen. For the moment we are somewhat engaged in the Constituent Assembly elections. But remember this, that the Constituent Assembly is not going to put up easily for long with the kind of Care-taker Government that exists to-day. There is bound to be conflict between them. In fact, the Care-taker Government has no stability; nor is there any possibility of its long continuance. How and when and what share the new Government will take I cannot say; it will be just entering into phantasy."

Constituent
Assembly
will not
put up
for long
with present
Care-taker
Govern-
ment.

When his attention was drawn to the forthcoming meeting of the All-India Muslim League Council at Bombay, Pandit Nehru said : "Whatever the Congress does is always intended to create new situations. We do not follow other people's situations. I am glad that the Muslim League has realised that we have created a new situation. We propose to create many further new situations. What we shall do if the League decides to do this or that ? We will see what the conditions then are and decide accordingly."

Congress
creates
new
situations.

Dealing with the powers of the proposed Union Centre, Pandit Nehru said : "According to the Cabinet Mission's proposals, there were three or four basic subjects in it—i.e., Defence, Foreign Affairs, Communications and the power to raise finances for these. Obviously, Defence and Communications have a large number of industries behind them. So these industries inevitably come under the Union Government and they are likely to grow. Defence is such a wide subject that it tends to expand its scope and activities more and more. All that comes under the Union Government.

Powers of
Union
Centre:
(i) Defence
and commu-
nications,

Similarly, External Affairs inevitably include foreign trade policy. You cannot have foreign policy if you divorce foreign trade from it. They

(ii) External
Affairs,

include all manner of things which are not put down there but which can be brought in."

(iii) Finance

Referring to the question of raising finances for the Union, Pandit Nehru said that it had to be done by taxation. "If any one suggests that some kind of contributions or doles are going to be given by the Provinces or States, it is bunkum. No Central Government carries on on doles." He recalled how an attempt to carry on with contribution had ended in failure in the United States in the early days of the American Confederation. "Inevitably, therefore," he added, "any Central Government must raise its finances by taxation. I cannot make a list now but obviously Customs, including Tariff, is connected with foreign trade policy. It may be, Income Tax will be another; I do not know what else."

Pandit Nehru pointed out that the Central Government must be responsible for foreign market, loans and such other subjects. It must also obviously control currency and credit. "Who is going to do it, if not the Centre? You cannot allow each Unit or Province to carry on a separate type of credit and foreign policy."

"Broadening of the Centre" necessary for various purposes like economic break-downs.

"Suppose there is trouble between the Provinces or States, or an economic breakdown due to famine conditions. The Centre comes in again inevitably. However limited the Centre might be, you cannot help the Centre having wide powers, because the past few years have shown that if there were no Central authority, the conditions would have been far worse in India. However, the fact that there has been a Central authority has not done much good to the country, because it has been incompetent. It is obvious that without the Central authority, you cannot deal with problems mentioned above. There must be some overall power to intervene in grave crisis, breakdown of the administration, or economic

breakdown or famine. The scope of the Centre, even though limited, inevitably grows because it cannot exist otherwise. Though some people might oppose this broadening of the Centre, the Constituent Assembly will have to decide on the point."

Pandit Nehru reiterated the Congress stand in respect of States' participation in the Constituent Assembly and said, "Our position has been and is that elected representatives of the States' people must go there. The Rulers say that they should nominate representatives. What their stand to-day is, I do not know. But, obviously, we cannot accept that position. The real difficulty is that apart from the Rulers' position, the Governments in the Indian States are so unrepresentative that a proper procedure must be adopted to make them representative and representatives of such Governments should go to the Constituent Assembly."

Representa-
tion of
States in
Constituent
Assembly

32. MR. JINNAH'S STATEMENT¹, JULY 13, 1946.

"Pandit Nehru's interpretation of the Congress acceptance of the Cabinet Mission's proposal of May 16 is a complete repudiation of the basic form upon which the long-term scheme rests and all its fundamentals and terms and obligations and rights of parties accepting the scheme," said Mr. Jinnah.

Nehru's
statement
is a
"complete
repudiation"
of the long-
term plan

"It has been clear from the outset to those who understand from the letter of the President of the Congress of June 25 addressed to the Viceroy and the resolution of the Congress Working Committee that followed it next day rejecting the Interim Government proposals contained in the statement of the Cabinet Delegation and Viceroy dated June 16, that the so-called 'acceptance' by the Congress only of long-term plan of May 16 was never intended to honour its terms and obligations with the desire to

Congress
did not
intend to
honour the
"terms and
obligations"
of the long-
term plan.

¹ Interview to Associated Press, Hyderabad (Deccan).

carry out the scheme in the spirit of constructive and friendly co-operation. It ended with covert threat that the successful working of the Constituent Assembly will depend upon the formation of a satisfactory provisional Interim Government. After that they themselves had wrecked the final proposals put forward by the Cabinet Delegation and the Viceroy in their statement of June 16.

Congress
wants
to use
Constituent
Assembly
as "plat-
form for
propa-
ganda".

"Brute
majority"
of Congress

In their resolution they make reservations and put fantastic interpretations upon the fundamentals of long-term plan and finally they make it clear that they were only going to prevent other people, whom they consider undesirable, from getting into the Constituent Assembly and seek election to wreck the long-term plan also. Their going into the Constituent Assembly is, as has now been seen, so frankly and clearly defined by Pandit Jawaharlal Nehru, on his assumption of office as the President of the Congress, 'to achieve their objective'. He has also made it quite clear that they are not going to honour any of the terms of the long-term plan and that they are only entering, to put it shortly, to use it as platform for their propaganda in utter disregard of rights and obligations of those agreeing and who are in honour bound to fulfil or abide by it. This is simply because they have secured a brute majority of 292 against 79 Muslims in the Constituent Assembly.

What Pandit Nehru says while referring to the correspondence that passed between the Cabinet Mission and Viceroy and the Congress and of their final decision of June 25-26 is : 'You will see on what conditions and circumstances we agreed to go into Constituent Assembly. We have agreed to go into the Constituent Assembly and we have agreed to nothing else.'

This is complete repudiation of the basic form upon which the long-term scheme rests and all its

fundamentals and terms and obligations and rights of parties accepting the scheme.

I understand that there is going to be a debate in the British Parliament very soon on the report of the Cabinet Delegation and it is for the British Parliament and His Majesty's Government to make it clear beyond doubt and remove the impression that the Congress has accepted the long-term scheme which is sought to be conveyed abroad by the timid efforts of the Cabinet Delegation and the Viceroy, who throughout these negotiations suffered from a fear complex and constant threat of the Congress of resorting to civil disobedience, which is now repeated by Pandit Jawaharlal Nehru in his present statement to the Press Conference and further, in their undue anxiety to secure success of their Mission at any cost and the sacrifice of every body else. In spite of knowing full well the true situation and the intentions of the Congress, the Mission have tried to treat the decision of the Congress as acceptance of a party who did so with real spirit of constructive co-operation to honour their obligations as an honourable organisation, according to spirit and letter of the long-term scheme."

British Parliament and Government should "remove the impression that the Congress has accepted the long-term scheme".

33. RESOLUTIONS OF MUSLIM LEAGUE COUNCIL, JULY 29, 1946.

1. Resolution withdrawing acceptance of Cabinet Mission Plan.

On June 6, 1946, the Council of the All-India Muslim League accepted the scheme embodied in the Statement of the Cabinet Delegation and the Viceroy dated May 16, 1946, and explained by them in their statement dated May 25, 1946. The scheme of the Cabinet Delegation fell far short of the demand of the Muslim nation for the immediate establishment of an independent and fully sovereign State of Pakistan comprising the six Muslim Provinces, but the

Union Centre to be "strictly confined to three subjects"

Council accepted a Union Centre for ten years strictly confined to three subjects, *viz.*, Defence, Foreign Affairs and Communications, since the scheme laid down certain fundamentals and safeguards and provided for the Grouping separately of the six Muslim Provinces in Sections B and C for the purpose of framing their Provincial and Group Constitutions unfettered by the Union in any way; and also with a view to ending the Hindu-Muslim deadlock peacefully and accelerating the attainment of the freedom of the peoples of India.

Formula
for composi-
tion of
Interim
Govern-
ment

In arriving at this decision the Council was also greatly influenced by the statement of the President, which he made with the authority of the Viceroy, that the Interim Government, which was an integral part of the Mission's scheme, was going to be formed on the basis of the formula : 5 Muslim League, 5 Congress, one Sikh and one Indian Christian or Anglo-Indian, and the most important portfolios to be distributed equally between the two major parties, the Muslim League and the Congress. The Council authorized the President to take such decision and action with regard to further details of setting up the Interim Government as he deemed fit and proper. In that very resolution, the Council also reserved the right to modify and revise this policy, if the course of events so required.

British
Govern-
ment's
"breach of
faith" with
League
re : setting
up of
Interim
Govern-
ment

The British Government have committed a breach of faith with the Muslim League in that the Cabinet Delegation and the Viceroy went back on the original formula of 5 : 5 : 2 for the setting up of the Interim Government to placate the Congress.

Having gone back on the original formula upon the faith of which the Muslim League Council came to their decision of June 6, the Viceroy suggested a new basis of 5 : 5 : 3 and, after carrying on considerable negotiations with the Congress and having failed

to get the Congress to agree. intimated to the parties on June 15 that he and the Cabinet Delegation would issue their final statement with regard to the setting up of the Interim Government.

Accordingly, on June 16, the President of the Muslim League received a statement embodying what was announced to be the final decision for setting up the Interim Government by the Viceroy, making it clear that, if either of the two major parties refused to accept the Statement of June 16, the Viceroy would proceed to form the Interim Government with the major party accepting it and such other representatives as were willing to join. This was explicitly laid down in Paragraph 8 of the Statement of June 16.

Even this final decision of the Cabinet Mission of June 16 with regard to the formation of the Interim Government was rejected by the Congress, whereas the Muslim League definitely accepted it—although it was different from the original formula, *i.e.* 5 : 5 : 2—because the Viceroy provided safeguards and gave other assurances in his letter dated June 20, 1946, addressed to the President of the Muslim League.

The Viceroy, however, scrapped the proposal of June 16 and postponed the formation of the Interim Government on the plea concocted by the 'legalistic talents' of the Cabinet Mission putting a most fantastic and dishonest construction upon Paragraph 8 of the Statement to the effect that, as both the major parties, *i.e.*, the Muslim League and the Congress, had accepted the Statement of May 16, the question of the Interim Government could only be taken up in consultation with the representatives of both the parties *de novo*.

"Fantastic and dishonest construction"

Even assuming that this construction was tenable, for which there is no warrant, the Congress, by their conditional acceptance with reservations and interpretations of their own, as laid down in the letter of the President of the Congress dated June 25 and the

Congress has 'in fact' rejected Cabinet Mission plan.

resolution of the Working Committee of the Congress passed at Delhi on June 26, repudiating the very fundamentals of the scheme, had, in fact, rejected the Statement of May 16, and, therefore, in no event was there any justification, whatsoever, for abandoning the final proposals of June 16.

As regards the proposal embodied in the Statements of May 16 and 25 of the Cabinet Delegation and the Viceroy, the Muslim League alone of the two major parties had accepted it.

Congress acceptance of Cabinet Mission plan is "conditional and subject to their own interpretation which is contrary to the authoritative statements" of the Mission.

The Congress have not accepted it because their acceptance is conditional and subject to their own interpretation which is contrary to the authoritative statements of the Delegation and the Viceroy issued on May 16 and May 25. The Congress have made it clear that they do not accept any of the terms or the fundamentals of the scheme, but that they have agreed only to go into the Constituent Assembly and to do nothing else; and that the Constituent Assembly is a sovereign body and can take such decisions as it may think proper in total disregard of the terms and the basis on which it is to be set up. Subsequently they made this clear beyond doubt in the speeches that were made at the meeting of the A.I.C.C. in Bombay on July 6 by prominent members of the Congress and in the statement of Pandit Nehru, the President of the Congress, to a Press conference on July 10 in Bombay and then again, even after the debate in Parliament, at a public speech by him at Delhi on July 22.

Muslim League alone has accepted Cabinet Mission Plan.

The result is that, of the two major parties, the Muslim League alone has accepted the Statements of May 16 and 25 according to the spirit and letter of the proposals embodied therein. In spite of the attention of the Secretary of State for India having been drawn to this situation by the statement of the President of the Muslim League on July 13 from Hyderabad (Dn.), neither Sir Stafford Cripps in the House of

Commons nor Lord Pethick-Lawrence in the House of Lords, in the course of the recent debate, has provided or suggested any means or machinery to prevent the Constituent Assembly from taking decisions which would be *ultra vires* and not competent for the Assembly to do. The only reply to this matter that the Secretary of State gave was the mere expression of a pious hope when he said 'that would not be fair to the other parties who go in.'

Once the Constituent Assembly has been summoned and meets, there is no provision or power that could prevent any decision from being taken by the Congress with its overwhelming majority, which would not be competent for the Assembly to take, or which would be *ultra vires* of it, and, however repugnant it might be to the letter or spirit of the scheme, it would rest entirely with the majority to take such decisions as they may think proper or suit them; and the Congress had already secured by sheer number an overwhelming Caste Hindu majority, and they will be in a position to use the Assembly in a manner which they have already declared, *i.e.*, that they will wreck the basic form of the Grouping of Provinces, and extend the scope, powers and subjects of the Union Centre which is confined strictly to three specific subjects as laid down in Paragraph 15 and provided for in Paragraph 19 of the Statement of May 16.

The Cabinet Delegation and the Viceroy collectively and individually have stated several times that the basic principles were laid down to enable the major parties to join the Constituent Assembly and that the scheme cannot succeed unless it is worked in a spirit of co-operation. The attitude of the Congress already shows that these conditions precedent for the successful working of constitution-making do not exist. This fact, taken together with the policy of the British Government of sacrificing the interests of the Muslim

Congress majority in Constituent Assembly would enable it to take "any decision" in violation of the Cabinet Mission plan.

Conditions for successful constitution-making do not exist.

Withdrawal
of accept-
ance of
Cabinet
Mission
plan

nation and some other weaker sections of the peoples of India, particularly the Scheduled Castes, to appease the Congress, and the way in which they have been going back on their oral and written solemn pledges and assurances given from time to time to the Muslims, leaves no doubt that, in these circumstances, participation by Muslims in the proposed constitution-making machinery is fraught with danger; and the Council, therefore, hereby withdraws its acceptance of the Cabinet Mission's proposals which was communicated to the Secretary of State for India by the President of the Muslim League on June 6, 1946.

11. Resolution on 'Direct Action'.¹

Justification
for "direct
action"

Whereas the Council of the All-India Muslim League has to-day resolved to reject the proposals embodied in the Statement of the Cabinet Delegation and the Viceroy of May 16, 1946, due to the intransigence of the Congress on the one hand and the breach of faith with the Muslims by the British Government on the other; and whereas Muslim India has exhausted without success all efforts to find a peaceful solution of the Indian problem by compromise and constitutional means; and whereas the Congress is bent upon setting up a Caste Hindu *Raj* in India with the connivance of the British; and whereas recent events have shown that power politics and not justice and fair play are the deciding factors in Indian affairs; and whereas it has become abundantly clear that the Muslims of India would not rest content with anything less than the immediate establishment of an independent and fully sovereign State of Pakistan and would resist any attempt to

¹ The adoption of this resolution was described by Mr. Jinnah as "the most historic act in our history". He said: "To-day we bid good-bye to constitutional methods... To-day we have also forged a pistol and are in a position to use it".

impose any constitution-making machinery or any Constitution, long-term or short-term, or the setting up of any Interim Government at the Centre without the approval and consent of the Muslim League; the Council of the All-India Muslim League is convinced that the time has now come for the Muslim nation to resort to direct action to achieve Pakistan to assert their just rights, to vindicate their honour and to get rid of the present slavery under the British and the contemplated future Caste Hindu domination.

This Council calls upon the Muslim nation to stand to a man behind their sole representative organization, the All-India Muslim League, and be ready for every sacrifice.

This Council directs the Working Committee to prepare forthwith a programme of direct action to carry out the policy initiated above and to organize the Muslims for the coming struggle to be launched as and when necessary.

As a protest against and in token of their deep resentment of the attitude of the British, this Council calls upon the Musalmans to renounce forthwith the titles conferred upon them by the alien Government.

34. CONGRESS WORKING COMMITTEE ON LEAGUE RESOLUTIONS, AUGUST 10, 1946.

The Working Committee regrets to note that the Council of the All-India Muslim League, reversing their previous decision, have decided not to participate in the Constituent Assembly.....

The Committee realises that there are differences in the outlook and the objective of the Congress and the Muslim League. Nevertheless, in the larger interests of the country as a whole and the freedom of the people of India, the Committee appeals for the co-operation of all those who seek freedom and the good of the country, in the hope that co-operation in

Appeal for
co-operation

the common tasks may lead to the solution of many of India's problems.

Cabinet
Mission
scheme was
"accepted...
in its
entirety".

The Committee further notes that criticisms have been advanced on behalf of the Muslim League to the effect that the Congress acceptance of the proposals contained in the statement of May 16 was conditional. The Committee wish to make it clear that while they did not approve of all the proposals contained in this statement, they accepted the scheme in its entirety. They interpreted it so as to resolve the inconsistencies contained in it and fill the omissions in accordance with the principles laid down in that statement. They hold that provincial autonomy is a basic provision and each Province has the right to decide whether to form or join a Group or not. Questions of interpretations will be decided by the procedure laid down in the statement itself, and the Congress will advise its representatives in the Constituent Assembly to function accordingly.

Meaning of
sovereignty
of Constitu-
ent
Assembly :
freedom
from
external
interference

The Committee has emphasised the sovereign character of the Constituent Assembly, that is, its right to function and draw up a Constitution for India without interference of any external power or authority. But the Assembly will naturally function within the internal limitations which are inherent in its task, and will therefore seek the largest measure of co-operation in drawing up a Constitution of free India allowing the greatest measure of freedom and protection for all just claims and interests.

35. FORMATION OF INTERIM GOVERNMENT, JULY 22-NOVEMBER 25, 1946.

1. Letter from Lord Wavell to Mr. Jinnah, July 22, 1946.¹

I declare my intention of replacing the present Care-taker Government² of officials by an Interim

¹ A similar letter was sent to Pandit Nehru, President of the Congress.

² The Care-taker Government was composed of nine members, of whom seven (i.e., all except the Governor-

Coalition Government as soon as possible; and am now putting to you as President of the Muslim League and to the President of the Congress the proposals set out below.

* * * *

I propose the following for your consideration :

(a) The Interim Government will consist of 14 members.

(b) Six members (to include one Scheduled Caste representative) will be nominated by the Congress : Five members will be nominated by the Muslim League. Three representatives of Minorities will be nominated by the Viceroy; one of these places will be kept for a Sikh. It will not be open to either the Congress or the Muslim League to object to the names submitted by the other party, provided they are accepted by the Viceroy.

Composition
of Interim
Govern-
ment

(c) Distribution of the portfolios will be decided after the parties have agreed to enter the Government and have submitted their names. The Congress and the Muslim League will each have an equitable share of the most important portfolios.

Distribution
of portfolios

(d) The assurances about the status of the Interim Government which I gave in my letter dated 30 May¹ to Maulana Azad will stand.

Status of
Interim
Govern-
ment

General and the Commander-in-Chief) were members of the Indian Civil Service : (1) Lord Wavell (Foreign and Political Department); (2) Sir Claude Auchinleck (War); (3) Sir A. Waugh (Home, Industries and Supplies); (4) Sir Gurunath Bewoor (Commerce and Commonwealth Relations); (5) Sir Eric Conran Smith (War Transport and Railways, Post, Air); (6) Sir Eric Coates (Finance); (7) Sir Robert Hutchings (Food, Agriculture); (8) Sir Akbar Hydari (Labour, Works, Mines and Power, Information, Arts, Health); (9) Sir George Spence (Law, Education). Of these, only two were Indians.

¹ In that letter Lord Wavell stated that (1) "His Majesty's Government would treat the new Interim Govern-

Major
communal
issues

I would welcome a convention, if freely offered by the Congress, that major communal issues can only be decided by the assent of both the major parties. But I have never thought that it was essential to make this a formal condition since, in fact, a Coalition Government could work on no other basis.

II. Letter from Mr. Jinnah to Lord Wavell, July 31, 1946.

Proposals
modified to
"appease"
Congress

I am in receipt of your letter of the 22nd July and I notice that this is the fourth basis that you are suggesting for the formation of your Interim Government. From 5 : 5 : 2 you came to 5 : 5 : 3 and then 5 : 5 : 4 as embodied in the statement of the Cabinet Delegation and yourself dated the 16th June, 1946, which was announced by you as final. Now you are making this fourth proposal, *i.e.*, 6 : 5 : 3.

Every time the Congress turned down the previous three proposals as you were unable to appease them or propitiate them; and every time the departure was prejudicial to the League and in favour of the Congress.

And now you have put your fourth proposal for my consideration.

"Go by to all
important
terms which
were in
favour" of
Muslim
League

It gives a go by to all the important terms which were in favour of the Muslim League; the Congress will have 6 members out of 14 as against 5 members of the Muslim League which breaks straightaway the principle of parity; and you are letting down the Scheduled Castes as one of them is proposed to be nominated by the Congress and not by the real

ment with the same close consultation and consideration as a Dominion Government"; (2) "H.M.G. will give to the Indian Government the greatest possible freedom in the exercise of the day-to-day administration of the country"; (3) "if you are prepared to trust me, we shall be able to co-operate in a manner which will give India a sense of freedom from external control and will prepare for complete freedom as soon as the new Constitution is made".

spokesmen of the Scheduled Castes. I note that you say that 5 members will be nominated by the Muslim League. Next, 3 members of the Minorities will be nominated by the Viceroy without reference to or consultation with the Muslim League. The only indication that you have given is that one of these places will be kept for a Sikh.

Then you proceed on to say that "it will not be open either to the Congress or the Muslim League to object to names submitted by the other party, provided they are accepted by the Viceroy", and from this I gather that it will be open to the Congress to nominate a quisling Muslim.

As to the distribution of portfolios, I note you say that "the Congress and the Muslim League will have an equitable share of the most important portfolios", and not equal as it was originally proposed.

Portfolios

As to the assurance about safeguards, *i.e.*, that a major communal issue could only be decided by the consent of both the major parties, you say that it will be only considered "if freely offered by the Congress", but you do not attach much importance to it and you conclude by saying that if the Interim Government does not work when formed on this basis and if we find conditions unsatisfactory, it will be open to us to withdraw. I believe in the principle, "Prevention is better than cure."

This is a very clear and substantial departure, most detrimental to the Muslim League, and is obviously intended to appease the Congress and devised primarily to meet their wishes.

Taking the final proposal of June 16, 1946, in your letter dated the 20th of June, you informed me that 14 members were invited by you on the basis of parity between Hindus and Muslims and community-wise and that it will not be changed without

No parity
between
Hindus and
Muslims

the agreement of two major parties. Apart from the secret talks you had with the Congress you clearly conveyed to us that the invitees were asked to join specifically on the basis of 5 Hindus, 5 Muslims, one Sikh, one Scheduled Caste, one Christian and one Parsi. Your present proposal clearly destroys the principle of parity as well as representation according to communities and gives a clear majority to the Congress as against the Muslim League to start with.¹

Further the Scheduled Caste Member will be nominated by the Congress, which in my opinion is most unjust to a community of 60 million people, who are groaning under the social and economic tyranny of the High Caste Hindus, whom alone the Congress really represents.

Representa-
tion of
Minorities

As regards representatives of other Minorities, they will be nominated by you without reference to or any consultation with the Muslim League. This again is a departure from what you stated in your letter of the 20th June, that "if any vacancy occurs among the seats at present allotted to the representatives of the Minorities, I shall naturally consult both the major parties before filling it." I think you will appreciate that when you start with 6 Congress and 5 Muslim League with a Congress majority, the Minority representatives will hold a very strong position as a balancing element, who would be nominated by you without having even consultation with the Muslim League, and this is a serious departure from what we were assured of in your letter of the 20th June.

Major
communal
issues

You categorically state in your letter of 20th June, paragraph 5, that "no decision on a major com-

¹ Lord Wavell wrote in reply on August 8, 1946 : "...the basis of representation which I suggested in the letter to which you now reply is the same as the one the Muslim League Working Committee accepted at the end of June, namely, 6 : 5 : 3".

munal issue would be taken by the Interim Government if a majority of the representatives of either of the two major parties were opposed to it", whereas now in the present proposals you inform me that you will welcome a convention if freely offered by the Congress.

As you have written this letter to me and is strictly personal and secret I can only say that in my opinion there is no chance of my Working Committee accepting this proposal.

III. Pandit Nehru's statement, Press Conference, Bombay, August 16, 1946.

Pandit Nehru said, "The present offer to the Congress to form the Interim Government¹ does make a difference. The Viceroy has made a new kind of approach. There is a psychological difference. Unlike previous occasions, we are now asked to form the entire Government, no doubt with the co-operation of others, but taking the responsibility for it. Now it is not a question of individuals being picked and chosen by an external authority. May be all this ends in our being caught in a trap, may be that it leads us much further in the direction we want to go. We should eliminate all the obstructions in our way. But in any case we should be very wary".

Congress asked to form "the entire Government"

Pandit Nehru made it clear in answer to a question that the Interim Government would not merely be the Executive Council, but a free Government. "Strictly legally speaking, there will be no change as regards the Viceroy's position but in practice, I trust, he will be a kind of constitutional head. If the Viceroy exercised his veto, it would lead to trouble."

Viceroy expected to "be a kind of constitutional head"

¹ In view of the League resolution of July 29, 1946, rejecting the Cabinet Mission Plan Lord Wavell "invited the President of the Congress to make proposals for the immediate formation of an Interim Government". (*Communique of the Government of India, August 12, 1946*).

Answering a question, Pandit Nehru said that the question of certification of any Bill by the Viceroy would not arise in as much as there cannot be a conflict between the Interim Government and the Central Legislative Assembly. "I cannot conceive of such a conflict", he said, "because any Provisional Government must carry the Assembly with it. If it does not, that Government must go".

Co-operation
of Muslim
League
wanted

About the Muslim League, Pandit Nehru said, "Co-operation in the formation of the Provisional Government is being offered to the Congress by all elements excepting the Muslim League for the moment. In the circumstances, however, it is obvious that we cannot stand still because of this unfortunate lack of co-operation from the Muslim League. So far as we are concerned, the door of co-operation will always be open and we shall, in whatever we do, be keeping in view this larger view point.¹ We shall always look for the largest measure of co-operation".

Congress
attitude to
League's
threat of
"Direct
Action"

Asked whether the Congress would put down the Muslim League if the Muslim League started "Direct Action" as a protest against the formation of the Interim Government by the Congress, Pandit Nehru said, "If the League starts some kind of 'Direct Action'² obviously the Government will face that

¹ Pandit Nehru wrote to Mr Jinnah on August 13, 1946, on receipt of the Viceroy's invitation: "I feel that my first step should be to approach you and seek your co-operation in the formation of a Coalition Provisional Government". He met Mr. Jinnah in Bombay on August 15. In a statement issued on August 18 Mr. Jinnah said that he "could not possibly accept" a "Provisional National Government" with a constitutional Governor-General "because after that there would be nothing to talk about the Muslim demand and our goal of Pakistan".

² The Muslim League's "Direct Action" commenced in Calcutta on the very day (August 16) on which Pandit Nehru was making this statement in Bombay.

'Direct Action'—either come to terms with it or oppose it as there is no other course. If the Government is strong, 'Direct Action' goes under, but if the Government is weak, the Government will go under."

IV. Viceroy's House Communique, August 24, 1946.

His Majesty the King has accepted the resignation of the present members of the Governor-General's Executive Council. His Majesty has been pleased to appoint the following :

Pandit Jawaharlal Nehru¹, Sardar Vallabhbhai Patel,² Dr. Rajendra Prasad³, Mr. M. Asaf Ali⁴, Mr. C. Rajagopalachari⁵, Mr. Sarat Chandra Bose⁶, Dr. John Mathai⁷, Sardar Baldev Singh⁸, Sir Shafaat Ahmad Khan⁹, Mr. Jagjivan Ram¹⁰, Syed Ali Zaheer¹¹ and Mr. Cooverji Hormusji Bhaba¹².

Composition
of first
Interim
Govern-
ment

Two more Muslim members will be appointed later. The Interim Government will take office on September 2.

V. Letter from Mr. Jinnah to Lord Wavell, October 13, 1946.

The Working Committee of the All-India Muslim

¹ Congress, Caste Hindu—Vice-President and Member in charge of External Affairs and Commonwealth Relations Departments.

² Congress, Caste Hindu—Home; Information and Broadcasting.

³ Congress, Caste Hindu—Food and Agriculture.

⁴ Congress, Muslim—Railways; Communications (Post and Air).

⁵ Congress, Caste Hindu—Industries and Supplies.

⁶ Congress, Caste Hindu—Works, Mines and Power.

⁷ Indian Christian, not associated with any party—Finance.

⁸ Sikh, Akali Party—Defence.

⁹ Nationalist Muslim—Education and Arts; Health.

¹⁰ Congress, Scheduled Caste—Labour.

¹¹ Nationalist Muslim—Law.

¹² Parsi, not associated with any party—Commerce.

League have considered the whole matter fully¹ and I am now authorised to state that they do not approve of the basis and scheme of setting up the Interim Government which has been decided by you, presumably with the authority of His Majesty's Government. Therefore, the Committee do not, and cannot, agree with your decision already taken, nor with the arrangements you have already made.

League
agrees
to join
Interim
Govern-
ment.

We consider and maintain that the imposition of this decision is contrary to the Declaration of August 8, 1940, but since, according to your decision, we have a right to nominate five members of the Executive Council on behalf of the Muslim League, my Committee have for various reasons come to the conclusion that in the interests of Mussalmans and other communities it will be fatal to leave the entire field of administration of the Central Government in the hands of the Congress. Besides, you may be forced to have in your Interim Government Muslims who would not command the respect and confidence of Muslim India, which would lead to very serious consequences: and lastly, for other very weighty grounds and reasons, which are obvious and need not be mentioned, we have decided to nominate five² members on behalf of the Muslim League . . .

¹ Pandit Nehru's correspondence with Mr. Jinnah (October 6—13, 1946) failed to secure Congress-League agreement on the formation of an Interim Government on a coalition basis. During the same period Lord Wavell carried on correspondence with Mr. Jinnah. The result was the League's entry into the Interim Government.

² The five nominees were:

Mr. Liaquat Ali Khan—Finance.

Mr. I. I. Chundrigar—Commerce.

Mr. Abdur Rab Nishtar—Post and Air.

Mr. Ghazanfar Ali Khan—Health.

Mr. Jogendra Nath Mandal (Hindu, Scheduled Caste)—
Law.

VI. Mr. Liaquat Ali Khan's¹ statement, Press Conference, October 26, 1946.

Mr. Liaquat Ali Khan said, "This Government² has been formed under the present Constitution and as such there is no such thing as joint or collective responsibility. Pandit Nehru is, therefore, nobody else's leader except of the Congress bloc in the Government. The term 'Leader of the Interim Government' is a polite fiction. The League bloc recognises no other leader except its own".

No joint or collective responsibility of Interim Government

Explaining his views in reply to several questions he said, "The Congress party have a leader of their own; that means that the Congress bloc in the Government has a leader of its own. The Muslim League bloc in the Government has a leader of its own. As regards the Vice-Presidentship of the Executive Council, the Vice-President's function as laid down in the Constitution is to preside at meetings of the Council in the absence of the Governor-General. He enjoys no other privilege which other members of the Government do not."³

Asked whether Mr. Jogendra Nath Mandal's nomination was a departure from League policy, he said, "The League has always championed the cause

¹ Secretary, Muslim League.

² The new Interim Government consisted of the following members: (1) Pandit Jawaharlal Nehru, Vice-President (External Affairs and Commonwealth Relations); (2) Sardar Vallabhbhai Patel (Home and Information and Broadcasting); (3) Dr. Rajendra Prasad (Food and Agriculture); (4) Mr. M. Asaf Ali (Transport and Railways); (5) Dr. John Matthai (Industries and Supplies); (6) Mr. C. Rajagopalachari (Education and Arts); (7) Sardar Baldev Singh (Defence); (8) Mr. Jagjivan Ram (Labour); (9) Mr. C. H. Bhabha (Works, Mines and Power); (10—14) 5 nominees of the Muslim League mentioned on p. 254.

³ In a statement issued on November 22, 1946, Mr. Liaquat Ali Khan said, "The Viceroy has made it clear in his public declarations that the Interim Government has been formed under the present constitution which does

Nomination of J. N. Mandal of not only the Mussalmans but all the down-trodden peoples of this country.”¹

Replying to the question whether the League’s entry into the Government implied that it would come into the Constituent Assembly he said, “I can only answer that question as Secretary of the League and I am not addressing this press conference in that capacity”.²

not provide for...any position analogous to that of a Prime Minister”. Pandit Nehru replied, “Mr. Liaquat Ali Khan should know that the present Government is officially called a Cabinet....He places reliance on the Government of India Act or something previous to it. In other words, he does not want to enlarge the freedom of the Government but to restrict it and is therefore, completely in line with the representatives of the British Government”.

¹ Mahatma Gandhi said on October 16, 1946, “Mr. Jinnah had said that the Muslims and the Hindus were two nations. The League was a purely communal organisation. How then could they nominate a Harijan to represent them? He feared their whole mode of entrance into the Cabinet had not been straight. He could not sense any generosity in the nomination of a Harijan in their quota of seats, especially when he read what was happening in Eastern Bengal. He was, therefore, forced to wonder whether they had come into the Cabinet also to fight”.

² Lord Wavell wrote to Pandit Nehru on October 23, 1946 : “I have made it clear to Mr. Jinnah...that the Muslim League’s entry into the Interim Government is conditional on the acceptance of the scheme of the Cabinet Delegation contained in the statement of May 16 and explained in the statement of May 25 and that he must call his Council at an early date to agree to this.

As I told you, Mr. Jinnah has assured me that the Muslim League will come into the Interim Government and the Constituent Assembly with the intention of co-operating. the Constituent Assembly with the intention of co-operating...” But Mr. Jinnah made a statement to the Press on November 25, 1946, saying : “I have never for a single moment conveyed to the Viceroy anything by way of assurances or otherwise except that the long-term plan could only be considered and decided by the Council of the League”.

VII. Pandit Nehru's speech, Meerut Session of Congress, November 21, 1946.

The circumstances in which the Congress formed the Interim Government are generally known. With the League's entry into it, some of the conventions previously built up have been discarded. The Viceroy, does not continue the spirit in which the Government was formed.

Two basic principles laid down in the formation of the Interim Government were, firstly, that it should work as a team, and, secondly, that Muslim League could only join it if it accepted the long-term plan. The League accepted both the principles although Mr. Jinnah used round-about pharseology, but now the League say that the Interim Government is neither a Cabinet nor a coalition and that the Muslim members form a separate bloc.

Difference between Congress and League re : working of Interim Government

I have written to Mr. Jinnah suggesting that differences between the Congress and the League in the Interim Government should be settled by mutual agreement without the Viceroy's intervention. But that suggestion remains unaccepted.

The Muslim League have always worked in league with the British Government to oppose nationalist forces in the country. That policy is still continuing and the British Government have taken advantage of it for their own ends. The League have allied themselves also with permanent officials, who consider that they have the right to rule over India.

League in alliance with permanent officials

Because of these differences I and my colleagues have threatened to resign twice during recent days. I want to say that our patience is strained to breaking point. And if these things continue, they will lead to a big struggle.

It is clear from Mr. Jinnah's statements that the League entered the Government not to work it but

League has
not accepted
Cabinet
Mission
plan

because they feared they would be weakened if they kept out. It is also clear from Mr. Jinnah's letters to the Viceroy that the League have not accepted the statement of May 16. If so, how can they continue in the Interim Government?

It is absurd to go on breaking promises so often and expect that Government will go on. The Viceroy is gradually removing the wheels of the car. In any case, the situation is critical; nevertheless we must stay in the Interim Government, though I cannot say how long.

Question of
Constituent
Assembly

Mr. Jinnah has tried to get the Constituent Assembly postponed *sine die*. If it is so postponed now, it may be said to be postponed for ever. I am not enamoured of this Constituent Assembly, but we have accepted it and should make the best use of it for our benefit. I do not expect that this will be the last Constituent Assembly. When our freedom becomes ampler we shall have another Constituent Assembly.

Constituent
Assembly
to establish
an independent
Republic

One good thing about this Constituent Assembly is that the British have no direct representation though we cannot prevent their indirect representation in it. If we do not hold the Constituent Assembly now, the atmosphere will deteriorate. The League are welcome to join the Constituent Assembly, but let me make it clear that whether they come in or keep out, we shall go in. We will go to the Constituent Assembly, fully prepared and fully organised, to establish an independent Republic. We are not going in to fight over petty things.

36. THE LONDON CONFERENCE, 1946

[On November 17, 1946, Mr. Jinnah informed Lord Wavell that the Constituent Assembly, which was scheduled to meet on December 9, should be postponed *sine die* because (1) "the Congress never had, nor have they even now, accepted the statement of May 16", (2) "the Assam Legislative Assembly had given a mandate to their repre-

sentatives to the Constituent Assembly in the clearest terms to defy the fundamentals of the statement of May 16¹ in regard to grouping with Bengal, and (3) "now we are face to face with the mass, organized and planned ruthless massacres of the Muslims in various parts of Bihar."¹ On November 21, he issued a public statement saying that "no representative of the Muslim League should attend the Constituent Assembly". On November 27 Lord Pethick-Lawrence, Secretary of State for India, announced in the House of Lords that the Viceroy, two representatives of the Congress, two representatives of the Muslim League and one representative of the Sikhs had been invited to London for discussions with a view to "reaching a common understanding between the two major parties on the basis on which the work of the (Constituent) Assembly can proceed with the co-operation of all parties". Pandit Nehru went to London as the sole representative of the Congress, accompanied by Sardar Baldev Singh who represented the Sikhs. The Muslim League was represented by Mr. Jinnah and Mr. Liaquat Ali Khan.]

Muslim
League's
boycott of
Constituent
Assembly

London
Conference

I. Statement by British Government, December 6, 1946.

The object of the conversations has been to obtain the participation and co-operation of all parties in the Constituent Assembly. It is not expected that any final settlement could be arrived at, since the Indian representatives must consult their colleagues before any final decision is reached.

The main difficulty that has arisen has been over the interpretation of Paragraph 19 (5) and (8) of the Cabinet Mission's Statement of May 16, relating to meetings in Sections, which runs as follows :—

19. (5) 'These Sections shall proceed to settle Provincial Constitutions for the Provinces included in each Section and shall also decide whether any Group Constitution shall be set for those Provinces

Para-
graph 19,
clauses 5
and 8, of
Cabinet
Mission
statement

¹ Mr. Jinnah made no reference to anti-Hindu riots in Calcutta and in Noakhali and other districts of East Bengal which had preceded the anti-Muslim riots in Bihar.

and, if so, with what Provincial Subjects the Group should deal. Provinces should have power to opt out of the Groups in accordance with the provisions of Sub-Clause (8) below.'

19 (8). 'As soon as the new constitutional arrangements have come into operation, it shall be open to any Province to elect to come out of any Group in which it has been placed. Such a decision shall be taken by the Legislature of the Province after the first General Election under the new Constitution.'

Different
interpretations
by
Congress
and League

The Cabinet Mission have throughout maintained the view that decisions of the Sections should, in the absence of an agreement to the contrary, be taken by a simple majority vote of the representatives in the Sections. This view has been accepted by the Muslim League, but the Congress have put forward a different view. They have asserted that the true meaning of the Statement, read as a whole, is that the Provinces have the right to decide both as to Grouping and as to their own Constitutions.

British
Government
supports
League
interpretation.

His Majesty's Government have had legal advice which confirms that the statement of May 16 means what the Cabinet Mission have always stated was their intention. This part of the statement, as so interpreted, must, therefore, be considered an essential part of the Scheme of May 16 for enabling the Indian people to formulate a Constitution which His Majesty's Government would be prepared to submit to Parliament. It should, therefore, be accepted by all parties in the Constituent Assembly.

On the matter immediately in dispute, His Majesty's Government urge the Congress to accept the view of the Cabinet Mission in order that a way may be opened for the Muslim League to reconsider their attitude. If, in spite of this reaffirmation of the intention of the Cabinet Mission, the Constituent

Assembly desires that this fundamental point should be referred for a decision of the Federal Court, such a reference should be made at a very early date. It will then be reasonable that the meetings of the Sections of the Constituent Assembly should be postponed until the decision of the Federal Court is known.

It is, however, clear that other questions of interpretation of the Statement of May 16 may arise and His Majesty's Government hope that if the Council of the Muslim League are able to agree to participate in the Constituent Assembly, they will also agree, as have the Congress¹, that the Federal Court should be asked to decide matters of interpretation that may be referred to them by either side and will accept such a decision, so that the procedure, both in the Union Constituent Assembly and in the Sections, may accord with the Cabinet Mission's Plan.

Reference
to Federal
Court for
interpreta-
tion

¹Speaking at the All-India Congress Committee on January 6, 1947, Pandit Nehru referred to this statement and observed, "It is a paragraph which is likely to mislead people. It says as a fact that the Congress have agreed already to it. Exactly when the Congress agreed to this or in what form is not clear. What has happened in the past few months is that on many occasions when any question or dispute arose we have said generally—and we said so at Simla—that we are prepared to refer any specific matter of dispute to an impartial arbitrator—whether it is the International Hague Court or any court of justice. Once or twice we also said that if there is difficulty about interpretation, we are prepared to refer it to some authority like the Federal Court. These were general statements we made and normally speaking we agreed to abide by them. But the way in which it has been put in this statement, as if a formal statement was made to us and we agreed, is completely wrong.

Pandit
Nehru on
reference to
Federal
Court

Apart from this, in view of recent developments and the statement of December 6 which produces a new situation, "I am not prepared to admit for an instant that we have agreed to any future procedure about references. Whatever the future brings we shall have to consider it. I should like to make it perfectly clear that we are giving no assurance

A Constitution framed by a Constituent Assembly which is not fully representative cannot be forced upon "any unwilling parts of the country".

There has never been any prospect of success for the Constituent Assembly except upon the basis of the agreed procedure. Should the Constitution come to be framed by a Constituent Assembly in which a large section of the Indian population has not been represented, His Majesty's Government could not, of course, contemplate—as the Congress have stated they would not contemplate—forcing such a Constitution upon any unwilling parts of the country.

II. Resolution of Congress Working Committee, December 22, 1946.

The Working Committee have given careful consideration to the statement issued by the British Government on December 6, 1946, as well as other statements made recently on their behalf in Parliament. These statements, though made by way of interpretation and elucidation, are clearly additions to and variations of the British Cabinet Mission's statement of May 16, 1946, on which the whole scheme of the Constituent Assembly was based.

The statement of May 16, 1946, laid down in paragraph 15 as basic principles of the Constitution that 'there should be a Union of India embracing both British India and the States', that 'all subjects other than Union subjects and all residuary powers should vest in the Provinces' and that 'Provinces should be free to form groups'.

Provincial autonomy is a basic principle of Cabinet Mission scheme.

about any references in regard to any other matters to the Federal Court. We find that everything we say is being twisted and distorted and brought against us in the future. We are not going to commit ourselves at the present moment to any reference to the Federal Court or to any other authority. We shall decide—or the Constituent Assembly shall decide—as we think best in the circumstances".

The Provinces were thus intended to be autonomous, subject to the Union controlling certain specified subjects. Paragraph 19 laid down, *inter alia*, the procedure for Sections to meet, for decisions to be taken as to whether Groups should be formed or not, and for any Province to elect to come out of the Group in which it might have been placed.

In their resolution of May 24, 1946, the Working Committee pointed out what appeared to be a divergence between the basic principles and the procedure suggested, in that a measure of compulsion was introduced which infringed the basic principle of provincial autonomy. The Cabinet Mission, thereupon, issued a statement on May 25, 1946, in which it was stated that 'the interpretation put by the Congress resolution on paragraph 15 of the Statement, to the effect that the Provinces can in the first instance make the choice whether or not to belong to the Section in which they are placed, does not accord with the Delegation's intentions. The reasons for Grouping of the Provinces are well known and this is an essential feature of the scheme and can only be modified by agreement between the two parties.'

Objection to compulsory Grouping raised long ago by Congress

The point at issue was not merely one of the procedure but the fundamental principle of provincial autonomy and whether or not a Province or part should be coerced against its will.

The Congress made it clear later that their objection was not to Provinces entering Sections, but to compulsory Grouping and the possibility of a dominating Province framing a Constitution for another Province entirely against the wishes of the latter. This might result in the framing of rules, the regulation of franchise, electorates, constituencies for elections and the composition of the Legislature which might seriously prejudice or even nullify the provision for a Province subsequently to opt out of a Group.

Effect of compulsory Grouping

It was pointed out that this could never be the intention of the Cabinet Mission as it would be repugnant to the basic principles and policy of the scheme they had propounded. The Congress approach to the problem of constitution-making has all along been that coercion should not be exercised against any Province or part of the country and that the constitution of free India should be drawn up by the co-operation and goodwill of all parties and Provinces concerned.

Wavell's
interpre-
tion

In a letter dated 15 June, 1946, from Lord Wavell to Maulana Azad, then President of the Congress, it was stated that 'the Delegation and I are aware of your objections to the principle of Grouping. I would, however, point out that the statement of May 16 does not make Grouping compulsory. It leaves the decision to the elected representatives of the Provinces concerned sitting together in Sections. The only provision which is made is that the representatives of certain Provinces should meet in Sections so that they can decide whether or not they wish to form Groups.'

Thus the principle which was emphasised again was that Grouping was not compulsory and in regard to Sections a certain procedure was indicated. This procedure was not clear and could be interpreted in more than one way and in any event a point of procedure could not override a basic principle. We pointed out that the right interpretation should be one which did no violence to that principle.

Further, in order to smooth the way to the co-operation of all concerned in the working of the proposed scheme we not only made it clear that we were prepared to go into the Sections, but also we suggested that if our interpretation was not accepted we would be agreeable to reference on this point to the Federal Court.

It is well-known that the proposal in regard to Grouping affected injuriously two Provinces especially, namely, Assam and the N.-W. F. P., as well as the Sikhs in the Punjab. Their representatives expressed their strong disapproval of this proposal. In a letter to the Secretary of State dated 25th May, 1946, Master Tara Singh gave expression to the anxiety and apprehensions of the Sikhs and asked for clarification in regard to certain matters. The Secretary of State sent an answer to this letter on June 1, 1946, in the course of which he said: 'I have considered carefully the detailed points you raise at the end of your letter. I fear the Mission cannot issue any additions to, or interpretation of the statement.'

How
Grouping
affected
Assam,
N.W.F.P.
and Sikhs
in the
Punjab

In spite of this explicit statement, the British Government have, on December 6, issued a statement which is both an addition to and an interpretation of the Statement of May 16, 1946. They have done so after more than six and a half months, during which period many developments have taken place as a consequence of the original statement. Throughout this period the position of the Congress was made repeatedly clear to the British Government or their representatives, and it was with full knowledge of this position that the British Government took subsequent steps in furtherance of the Cabinet Mission's proposals. That position was in conformity with the basic principles laid down in the statement of May 16, 1946, which statement the Congress had accepted in its entirety.

* * *

In spite of . . . assurances to the effect that no addition to, or interpretations of, the statement of May 16, 1946, were going to be made, the British Government have now issued a statement which clearly, in several respects, goes beyond the original

Statement of
December 6
"goes
beyond the
original
statement"
of Cabinet
Mission.

statement, on the basis of which progress has been made till now.

British
intervention
has
created
a new
situation.

The Working Committee deeply regret that the British Government should have acted in a manner which has not been in keeping with their own assurance, and which has created suspicion in the minds of large numbers of people in India. For some time past the attitude of the British Government and their representatives in India has been such as to add to the difficulties and complexities of the situation in the country. Their present intervention long after the members of the Constituent Assembly had been elected has created a new situation which is full of peril for the future. Because of this, the Working Committee have given anxious and prolonged thought to it.

* * * *

Question of
reference
to Federal
Court

In their statement of December 6, 1946, the British Government, in giving their interpretation of a doubtful point of procedure, have referred to it as a 'fundamental point' and suggested that the Constituent Assembly may refer it to the Federal Court at a very early date. Subsequent statements made on behalf of the British Government have made it clear that they are not prepared to accept the decision of this Court should it go against their own interpretation. On behalf of the Muslim League also it has been stated that they will not be bound by the decision of the Federal Court, and a demand for partition of India, which is a negation of the Cabinet Mission's scheme, continues to be put forward.

While the Congress has always been willing to agree to a reference to the Federal Court, any reference now, when none of the other parties are prepared to join in it or to accept it, and one of them does not even accept the basis of the scheme, becomes totally uncalled for and unbecoming, and unsuited to the dignity of either the Congress or the Federal Court,

By their repeated statements, British statesmen have ruled this out.

The Working Committee are still of opinion that the interpretation put by the British Government in regard to the method of voting in the Sections is not in conformity with provincial autonomy, which is one of the fundamental bases of the scheme proposed in the statement of May 16.

III. Resolution of Muslim League Working Committee, January 31, 1947.

By their statement of December 6, H. M. G. admitted that the interpretation which the Muslim League had always put on paragraphs 19 (v) and 19 (viii) of the Cabinet Mission's statement of May 16 was the correct one and accorded with the intention of the Cabinet Mission and H. M. G.

By that statement it was also proved that the Congress, on the other hand, had 'put forward a different view' and, therefore, had not accepted what H. M. G. themselves described as 'this fundamental point', namely, that decision in the Sections, including questions relating to the framing of the Constitutions of Provinces included in each Group, 'should, in the absence of agreement to the contrary, be taken by a simple majority vote of the representatives in the Sections'.

* * * *

The situation created by the issue of this statement by H. M. G. is that the onus of taking the next step fell on the Congress and it was called upon :

1. To accept honestly and unequivocally the correct interpretation of paragraphs 19 (v) and 19 (viii) of the Cabinet Mission's statement of May 16, which interpretation has been already accepted by the Muslim League, or to refer the point to the Federal Court ;

"Onus of taking next step fell on Congress".

2. To reaffirm that it has accepted the procedure for the settling of other questions or interpretations that might arise, so that the decision should accord with the basic and fundamental principles of the scheme of May 16, 1946, namely, that either side could refer such questions to the Federal Court whose decisions would be binding on all concerned ; and

3. To postpone the session of the Constituent Assembly which had been called for December 9, 1946, pending settlement of the dispute over the fundamental points of principle and procedure which had been brought to the fore by the statement of December 6, and the correct interpretation of which the Congress has not accepted, as was made clear in that statement, there being no prospect of success for the Constituent Assembly without such agreement, particularly on the part of the Congress.

Congress
"deter-
mined to
adhere to
its own
views and
interpre-
tations"

The Working Committee of the All-India Muslim League regret to note that the Congress has reacted to the situation created by the statement of December 6 in a manner which shows that it is determined to adhere to its own views and interpretations of the fundamental provisions in the Cabinet Mission's statement of May 16, which militate against the clearly expressed intentions and interpretations of the authors of that statement as well as of H. M. G. as a whole and which destroy the very basis on which the constitutional plan set forth in that statement has been drawn up.

By its resolution of December 22 the Congress Working Committee rejected the suggestion that the point in dispute should be referred to the Federal Court if the Congress did not accept 'this reaffirmation of the intention of the Cabinet Mission'. . . .

The A. I. C. C., by its resolution passed on January 6, purported 'to agree to advise action in accordance with the interpretation of the British Government in regard to the procedure to be

followed in the Sections', about which there never was any doubt in the mind of any sane and honest person, but it immediately added the following qualifying clauses :

'It must be clearly understood, however, that this must not involve any compulsion on a Province and that the rights of the Sikhs in the Punjab should not be jeopardized. In the event of any attempt at such compulsion, a Province or part of a Province has the right to take such action as may be deemed necessary in order to give effect to the wishes of the people concerned. The future course of action will depend upon the developments that take place and the A. I. C. C., therefore, directs the Working Committee to advise upon it, whenever circumstances so require, keeping in view the basic principle of provincial autonomy.'

Congress
on Group-
ing : no
compulsion
on any
Province or
on Sikhs

These qualifying clauses . . . confer the right of veto within the Section on 'a Province' and what is more absurd, on a part of 'a Province' as well as on the Sikhs in the Punjab, and, therefore, they completely nullify the advice or so-called 'acceptance' by the Congress of the December 6 statement, and this A. I. C. C. resolution is no more than a dishonest trick and jugglery of words by which the Congress has again attempted to deceive the British Government, the Muslim League, and public opinion in general.

Veto given
by Congress
to 'Province
or part of
a Province'

'Dishonest
trick and
jugglery of
words'

The question at issue was a very simple one. What was required was a straight and honest answer and not these evasions, equivocations, and camouflage from one of the two major contracting parties to the questions whether the Congress honestly and sincerely agreed to the proposals of May 16 as clarified by H. M. G. on December 6, 1946, and whether it was prepared to honourably abide by them and carry out the letter and spirit of the proposals

'Straight
and honest
answer,
wanted

which were put before the two major parties by the British Government, who were merely acting as mediators as, unfortunately, the two major parties had failed to come to any agreement at Simla and the conference at Simla had broken down.

Of the second point in H. M. G.'s statement of December 6, namely, the procedure whereby either side could refer other questions of interpretation to the Federal Court, the resolution of the A. I. C. C. makes no mention, but the mover of the resolution, Pandit Nehru, on being questioned on the second day of the A. I. C. C.'s deliberations as to whether the Congress had agreed to this procedure, categorically answered in the negative and declared : ' . . . I should like to make it perfectly clear that we are giving no assurance about any references in regard to any other matters to the Federal Court. . . We are not going to commit ourselves at the present moment to any reference to the Federal Court or to any other authority.' . . .

Congress
view on
reference to
Federal
Court

With regard to the third point, namely, that if a Constitution comes to be framed by a Constituent Assembly in which 'a large section of the Indian population has not been represented', such a Constitution would not be forced upon any 'unwilling parts of the country', the A. I. C. C. resolution, in paragraph 3, completely distorts the meaning and application of this principle and makes this an excuse to instigate a section of the population of Assam, the N.-W.F.P., the Sikhs and even Baluchistan, to revolt against decisions that might be taken by the relevant Sections sitting as a whole and by a simple majority vote. In the opinion of the Working Committee of the All-India Muslim League the subsequent decision of the Assam Provincial Congress not to abide by the procedure laid down for Sections and its reiteration that 'the Constitution for Assam shall be framed by her own representatives only' is a direct result of this:

Rejection of
Grouping
by Assam
Provincial
Congress

instigation and is a step taken by Assam Congressmen in collusion with the all-India leaders of the Congress.¹

The Constituent Assembly met on December 9 and subsequent dates and thereafter on January 20 and subsequent dates and has already taken decisions of vital character, so far as it is known to the public; and as some of the sittings were held in camera it is very difficult to get correct information as to what other resolutions it has passed or what decisions it has already taken. It has passed a resolution, known as the independent sovereign republic resolution, laying down the objectives.² It is not only a proclamation of India as an independent sovereign republic but it lays down fundamentals of the Constitution as was admitted by Pandit Nehru, the mover of the resolution. It is a very vital resolution. It lays down the essentials of the next Constitution; several things which are mentioned there are fundamentals of the Constitution. It speaks of a Republic or Union, functions and powers vested in the Union or as are inherent or implied in the Union and resulting therefrom, and talks of present boundaries, States and present authorities, the residuary powers, powers being derived from the people, minority rights and fundamental rights. These are undoubtedly fundamentals of the Constitution and they are beyond the limit of the powers and the terms of the scheme

Objectives
Resolution
of Cons-
tituent
Assembly

Vital deci-
sions taken
by Cons-
tituent
Assembly

¹ The London *Times* observed on February 4, 1947, "The Resolution passed by the Congress Party Working Committee (?) on January 5 signified only a grudging and qualified acceptance of the British Government's finding . . . but it was an acceptance. The reservation, exempting provinces from 'compulsion' and safeguarding Sikh rights in the Punjab, however ill-advised in view of League susceptibilities, was a plain invitation to Mr. Jinnah and his supporters to give Assam, the Frontier Province and the Sikhs some kind of assurances as they were demanding for themselves . . . The League Working Committee lamentably failed to grasp this opportunity."

² Document No. 37.

The Lon-
don *Times*
on League
policy

of the Cabinet Mission's statement of May 16 and the resolution is therefore illegal, *ultra vires* and not competent to the Constituent Assembly to adopt.

Other steps
taken by
Constituent
Assembly

Next, it has appointed several committees and has proceeded to elect an Advisory Committee, referred to in paragraph 20 of the statement of the Cabinet Mission and the Viceroy, on the rights of citizens, minorities, Tribal and Excluded Areas. Further it has appointed a Steering Committee and various other committees¹, and as some of the decisions have been taken in camera² it is very difficult to say what resolutions it has passed or decisions it has taken. It has also passed the rules of procedure and assumed control of Sections by means of these rules for which there is no warrant or justification, particularly rule 63 which runs as follows :

Rights
given to
Provincial
Legislatures

'1. The Assembly shall, before finally settling the Union Constitution, give an opportunity to the several Provinces and States through their Legislatures to formulate, within such time as it may fix, their views upon the resolutions of the Assembly outlining the main features of the Constitution or, if the Assembly so decides, upon the preliminary draft of the Constitution'.

¹ In these Committees seats to which League members were entitled were left vacant

² With reference to this statement the Secretariat of the Constituent Assembly issued the following Press communique on February 4, 1947 :

"... the Constituent Assembly has passed no secret resolution and taken no secret decision. On two occasions the Assembly resolved itself into a Committee of the whole House sitting in camera and discussed the rules of procedure and the budget, this procedure being adopted in order to facilitate the freedom and informality of discussion necessitated by these particular subjects. Thereafter the Committee assembled in public session and took decisions therein which are public property. No other subject was discussed nor any decision taken in these 'in camera' meetings."

'2. Before the Constitution of any Province is finally settled or the decision to set up a Group Constitution for the Section in which the Province is included is finally taken, an opportunity shall be given to the Province concerned through its Legislature to formulate, within such time as may be fixed for the purpose, its views (a) upon the resolution outlining the main features of the Constitution or, if the majority of the representatives of the Province in the Assembly so desire, upon the preliminary draft of such Constitution, and (b) upon the preliminary decision of the Section concerned as to whether a Group Constitution shall be set up for the Provinces included in the Section and, if so, with what Provincial subjects the Group should deal'.

And lastly, it has also appointed a committee to define the scope of the Union subjects, whereas the position was made quite clear, immediately after the statement of May 16 was issued, by the Secretary of State for India in his broadcast and by Sir Stafford Cripps at his Press Conference where he read out an explanatory statement. Both of them stated in the clearest possible terms the time and manner in which the Group Constitutions were to be formed by the Sections concerned before the Union Constitution was taken up.

Constituent
Assembly's
Committee
to define
scope of
Union
subjects

The Secretary of State said: 'After a preliminary meeting in common, these representatives of the Provinces will divide themselves up into three Sections. These Sections will decide upon Provincial and Group matters. Subsequently they will reunite to decide upon the Constitution for the Union'.

Sir Stafford Cripps at his Press conference said: 'So the three Sections will formulate the Provincial and Group Constitutions and when that is done they will work together with the States' representatives to

make the Union Constitution. That is the final phase, and the Union is strictly confined to three subjects.'

Constituent
Assembly
has taken
decisions
beyond its
functions
and powers.

It is clear from the above that the Constituent Assembly, in which only the Congress Party is represented, has taken decisions on principles and procedure, some of which exceed the limitations imposed by the Statement of May 16 on the Constituent Assembly's functions and powers, at the preliminary stage and which further impinge upon the powers and functions of the Sections. By taking these decisions in the Constituent Assembly and by appointing a committee consisting of individuals chosen by the Congress, the Congress has already converted that truncated Assembly into a rump and something totally different from what the Cabinet Mission's statement had provided for.

Congress
'has des-
troyed all
funda-
mentals'
of Cabinet
Mission
Plan.

In view of these facts and circumstances the Working Committee of the Muslim League is definitely of opinion that the Congress, by rejecting this final appeal of H. M. G. to accept the correct interpretation of the fundamental procedure of the Cabinet Mission's statement of May 16, and by having already, by the resolutions and decisions taken in two sessions, converted the Constituent Assembly into a body of its own conception, has destroyed all fundamentals of the statement of May 16 and every possibility of compromise on the basis of the Cabinet Mission's constitutional plan. The Working Committee accordingly calls upon H. M. G. to decide that the constitutional plan formulated by the Cabinet Mission, as announced on May 16, has failed because the Congress after all these months of efforts has not accepted the statement of May 16, nor have the Sikhs, nor the Scheduled Castes¹.

¹This is an absolutely incorrect statement. All representatives of the Scheduled Castes elected to the Constituent Assembly were at this time participating in its proceedings. Even Dr. Ambedkar, who claimed to be the leader of the

The Working Committee of the Muslim League is, therefore, emphatically of opinion that the elections to, and thereafter the summoning of the Constituent Assembly, in spite of strong protests and most emphatic objections on the part of the League, were *ab initio* void, invalid and illegal¹ as not only the major parties had not accepted the statement but even the Sikhs and the Scheduled Castes had also not done so and that the continuation of the Constituent Assembly and its proceedings and decisions are *ultra vires*, invalid, and illegal and it should be forthwith dissolved².

Constituent Assembly's proceedings and decisions are "*ultra vires*, invalid and illegal".

37. THE 'OBJECTIVES RESOLUTION' OF CONSTITUENT ASSEMBLY

This Constituent Assembly declares its firm and solemn resolve to proclaim India as an Independent Sovereign Republic and to draw up for her future governance a Constitution:

Independent
Sovereign
Republic

Scheduled Castes opposed to the Congress, and whose follower Mr. J. N. Mandal was nominated by Mr. Jinnah to represent the League in the Interim Government, joined the Constituent Assembly and declared that he preferred a strong Centre.

The London *Times* observed on February 4, 1947, "Though predominantly under the Congress Party influence the Constituent Assembly is neither a party caucus nor exclusively Hindu; non-Muslim minorities are well represented"

¹ Mahatma Gandhi said on February 3, 1947, "If the elections and proceedings were illegal, the legality should be challenged in a court of law. Otherwise the charge had no meaning."

² The London *Times* observed on February 4, 1947. ". . . it was highly preposterous for the Karachi meeting to call upon the British Government for a declaration that the Cabinet Mission plan has failed and to demand the dissolution of the Constituent Assembly. The plan has not failed. It still offers one hope of evolving an Indian Constitution. . . ."

Territorial
extent

Wherein the territories that now comprise British India, the territories that now form the Indian States, and such other parts of India as are outside British India and the States as well as such other territories as are willing to be constituted into the Independent Sovereign India, shall be a Union of them all ; and

Auto-
nomous
Units with
residuary
powers

Wherein the said territories, whether with their present boundaries or with such others as may be determined by the Constituent Assembly and thereafter according to the law of the Constitution, shall possess and retain the status of autonomous Units, together with residuary powers, and exercise all powers and functions of government and administration, save and except such powers and functions as are vested in or assigned to the Union, or as are inherent or implied in the Union or resulting therefrom ; and

Centre's
powers and
functions

Power
derived
from
people

Wherein all power and authority of the Sovereign Independent India, its constituent parts and organs of government, are derived from the people ; and

Fundamen-
tal rights

Wherein shall be guaranteed and secured to all the people of India justice, social, economic and political: equality of status, of opportunity, and before the law: freedom of thought, expression, belief, faith, worship, vocation, association and action, subject to law and public morality ; and

Wherein adequate safeguard shall be provided for minorities, backward and tribal areas, and depressed and other backward classes ; and

Whereby shall be maintained the integrity of the territory of the Republic and its sovereign rights on land, sea and air according to justice and the law of civilised nations ; and

This ancient land attain its rightful and honoured place in the world and make its full and willing

contribution to the promotion of world peace and the welfare of mankind.¹

38. MR. ATTLEE'S STATEMENT, HOUSE OF COMMONS, FEBRUARY 20, 1947.

1. It has long been the policy of successive British Governments to work towards the realisation of self-government in India. In pursuance of this policy, an increasing measure of responsibility has been devolved on Indians, and to-day the civil administration and the Indian armed forces rely to a very large extent on Indian civilians and officers. In the constitutional field, the Acts of 1919 and 1935 passed by the British Parliament each represented a substantial transfer of political power. In 1940 the Coalition Government recognised the principle that Indians should themselves frame a new Constitution for a fully autonomous India, and in the offer of 1942 they invited them to set up a Constituent Assembly for this purpose as soon as the War was over.

Steps taken by British Government towards "realisation of self-government in India"

2. His Majesty's Government believe this policy to have been right and in accordance with sound democratic principles. Since they came into office, they have done their utmost to carry it forward to its fulfilment. The declaration of the Prime Minister of the 15th March last, which met with general approval in Parliament and the country, made it clear that it was for the Indian people themselves to choose their future status and Constitution and that in the opinion of His Majesty's Government the time had come for responsibility for the government of India to pass into Indian hands.

Responsibility for government should now pass into Indian hands.

¹ The resolution was moved by Pandit Nehru on December 13, 1946. It was carried amidst acclamation on January 22, 1947. It forms the basis of the Preamble to the present Constitution of India.

Cabinet
Mission
Plan

3. The Cabinet Mission which was sent to India last year spent over three months in consultation with Indian leaders in order to help them to agree upon a method for determining the future Constitution of India, so that the transfer of power might be smoothly and rapidly effected. It was only when it seemed clear that without some initiative from the Cabinet Mission agreement was unlikely to be reached that they put forward proposals themselves.

4. These proposals, made public in May last, envisaged that the future Constitution of India should be settled by a Constituent Assembly composed, in the manner suggested therein, of representatives of all communities and interests in British India and of the Indian States.

Interim
Govern-
ment

5. Since the return of the Mission, an Interim Government has been set up at the Centre composed of the political leaders of the major communities, exercising wide powers within the existing Constitution. In all the Provinces Indian Governments responsible to Legislature are in office.

Constituent
Assembly
not func-
tioning as
it should

6. It is with great regret that His Majesty's Government find that there are still differences among Indian parties which are preventing the Constituent Assembly from functioning as it was intended that it should. It is of the essence of the plan that the Assembly should be fully representative.

Decision to
transfer
power by
a date not
later than
June, 1948

7. His Majesty's Government desire to hand over their responsibility to authorities established by a Constitution approved by all parties in India in accordance with the Cabinet Mission's plan. But unfortunately there is at present no clear prospect that such a Constitution and such authorities will emerge. The present state of uncertainty is fraught with danger and cannot be indefinitely prolonged. His Majesty's Government wish to make it clear that it is their definite

intention to take necessary steps to effect the transference of power to responsible Indian hands by a date not later than June, 1948.

8. This great sub-continent now containing over four hundred million people has for the last century enjoyed peace and security as a part of the British Commonwealth and Empire. Continued peace and security are more than ever necessary to-day if the full possibilities of economic development are to be realised and a higher standard of life attained by the Indian people.

Peace-essential to economic development

9. His Majesty's Government are anxious to hand over their responsibilities to a Government which, resting on the sure foundation of the support of the people, is capable of maintaining peace and administering India with justice and efficiency. It is, therefore, essential that all parties should sink their differences in order that they may be ready to shoulder the great responsibilities which will come upon them next year.

10. After months of hard work by the Cabinet Mission a great measure of agreement was obtained as to the method by which a Constitution should be worked out. This was embodied in their statement of May last. His Majesty's Government there agreed to recommend to Parliament a Constitution worked out in accordance with the proposals made therein by a fully representative Constituent Assembly. But if it should appear that such a Constitution will not have been worked out by a fully representative Assembly before the time mentioned in Paragraph 7, His Majesty's Government will have to consider to whom the power of the Central Government in British India should be handed over, on due date, whether as a whole to some form of Central Government for British India, or in some areas to the existing Provincial Governments, or in such other way as

Partition of India contemplated

may seem most reasonable and in the best interests of the Indian people.

11. Although the final transfer of authority may not take place until June, 1948, preparatory measures must be put in hand in advance. It is important that the efficiency of the civil administration should be maintained and that the defence of India should be fully provided for. But inevitably, as the process of transfer proceeds, it will become progressively more difficult to carry out to the letter all the provisions of the Government of India Act, 1935. Legislation will be introduced in due course to give effect to the final transfer of power.

Para-
mountcy
over
Princely
States will
not be
transferred
to any
Government
of British
India.

12. In regard to the Indian States, as was explicitly stated by the Cabinet Mission, His Majesty's Government do not intend to hand over their powers and obligations under Paramountcy to any Government in British India. It is not intended to bring Paramountcy, as a system, to a conclusion earlier than the date of the final transfer of power, but it is contemplated that for the intervening period the relations of the Crown with individual States may be adjusted by agreement.

13. His Majesty's Government will negotiate agreements in regard to matters arising out of the transfer of power with representatives of those to whom they propose to transfer power.

Commercial
connection
between
India and
Britain

14. His Majesty's Government believe that British commercial and industrial interests in India can look forward to a fair field for their enterprise under the new conditions. The commercial connection between India and the United Kingdom has been long and friendly and will continue to be to their mutual advantage.

15. His Majesty's Government cannot conclude this statement without expressing on behalf of the people of this country their goodwill and good wishes

towards the people of India as they go forward to this final stage in their achievement of self-government. It will be the wish of everyone in these Islands that, notwithstanding constitutional changes, the association of the British and Indian peoples should not be brought to an end; and they will wish to continue to do all that is in their power to further the well-being of India.

16. The House will wish to know of an announcement which is being made public to-day. Field-Marshal the Right Honourable Viscount Wavell was appointed Viceroy in 1943, after having held high military command in the Middle East, South-East Asia and India with notable distinction since the beginning of the War. It was agreed that this should be a war-time appointment. Lord Wavell has discharged this high office during this very difficult period with devotion and a high sense of duty. It has, however, seemed that the opening of a new and final phase in India is an appropriate time to terminate this war appointment. His Majesty has been pleased to approve, as successor to Lord Wavell, the appointment of Admiral the Viscount Mountbatten, who will be entrusted with the task of transferring to Indian hands responsibility for the government of British India in a manner that will best ensure the future happiness and prosperity of India. The change of office will take place during March. The House will be glad to hear that His Majesty has been pleased to approve the conferment of an Earldom on Viscount Wavell.

Retirement
of Wavell
and appoint-
ment of
Mountbatten

39. RESOLUTION OF CONGRESS WORKING COMMITTEE, MARCH 6-8, 1947.

The Working Committee welcome the declaration made on behalf of the British Government of their definite intention to transfer power finally by a date

Attlee's
statement
welcomed

not later than June 1948 and to take steps to that end in advance.

Interim
Government
should work
as Dominion
Government.

The transfer of power, in order to be smooth, should be preceded by the recognition in practice of the Interim Government as a Dominion Government with effective control over the Services and administration, and the Viceroy and Governor-General functioning as the constitutional head of the Government. The Central Government must necessarily function as a Cabinet with full authority and responsibility. Any other arrangement is incompatible with good government and is peculiarly dangerous during a transitional period full of political and economic crisis.

Work of
Constituent
Assembly
should be
expedited.

The Congress has already expressed its acceptance of the British Cabinet Mission's scheme of May 16, 1946, and has further accepted the interpretations put upon it by the British Cabinet on December 6, 1946. In accordance therewith, the Constituent Assembly has been functioning and has appointed various committees to carry on its work. It has become all the more essential now to expedite this work so that the Constitution for an Indian Union and its constituent units should be finally prepared and given effect to well within the stated period to facilitate the final transfer of power.

The Working Committee welcome the decision of a number of States to join the Constituent Assembly and trust that all the States and their peoples will be effectively represented in this task of making a Constitution for an Indian Union. The Committee invite afresh the representatives of the Muslim League, who have been elected to the Constituent Assembly, to join in this historic undertaking¹.

The work of the Constituent Assembly is essentially voluntary. The Working Committee have fre-

¹ The League did not respond to this invitation.

requently stated that there can or should be no compulsion in the making of a Constitution for India. It is the fear of compulsion or coercion that has given rise to distrust and suspicion and conflict. If this fear goes, as it must, it will be easy to determine India's future so as to safeguard the rights of all communities and give equal opportunities to all. It has been made clear that the Constitution framed by the Constituent Assembly will apply only to those areas which accept it. It must also be understood that any Province or part of a Province which accepts the Constitution and desires to join the Union cannot be prevented from doing so. Thus there must be no compulsion either way, and the people will themselves decide their future. This peaceful and co-operative method is the only way to make democratic decisions with the maximum of consent.

No compulsion on any Province or part of a Province.

40. THE MOUNTBATTEN PLAN, JUNE 3, 1947.

1. On February 20th, 1947, His Majesty's Government announced their intention of transferring power in British India to Indian hands by June, 1948. His Majesty's Government had hoped that it would be possible for the major parties to co-operate in the working out of the Cabinet Mission's Plan of May 16, 1946, and evolve for India a Constitution acceptable to all concerned. This hope has not been fulfilled.

Cabinet Mission Plan not worked out.

2. The majority of the representatives of the Provinces of Madras, Bombay, the United Provinces, Bihar, Central Provinces and Berar, Assam, Orissa and the North-West Frontier Province, and the representatives of Delhi, Ajmer-Merwara and Coorg have already made progress in the task of evolving a new Constitution. On the other hand, the Muslim League Party, including in it a majority of the representatives of Bengal, the Punjab and Sind as also the

representative of British Baluchistan, have decided not to participate in the Constituent Assembly.

Purpose and
scope of
Mountbatten
Plan.

3. It has always been the desire of His Majesty's Government that power should be transferred in accordance with the wishes of the Indian people themselves. This task would have been greatly facilitated if there had been agreement among the Indian political parties. In the absence of such an agreement, the task of devising a method by which the wishes of the Indian people can be ascertained has devolved on His Majesty's Government. After full consultation with political leaders in India, His Majesty's Government have decided to adopt for this purpose the plan set out below. His Majesty's Government wish to make it clear that they have no intention of attempting to frame any ultimate Constitution for India ; this is a matter for the Indians themselves. Nor is there anything in this plan to preclude negotiations between communities for a united India.

Work of
existing
Constituent
Assembly
will not be
interrupted.

4. It is not the intention of His Majesty's Government to interrupt the work of the existing Constituent Assembly. Now that provision is made for certain Provinces specified below, His Majesty's Government trust that, as a consequence of this announcement, the Muslim League representatives of those Provinces, a majority of whose representatives are already participating in it, will now take their due share in its labours. At the same time, it is clear that any Constitution framed by this Assembly cannot apply to those parts of the country which are unwilling to accept it. His Majesty's Government are satisfied that the procedure outlined below embodies the best practical method of ascertaining the wishes of the people of such areas on the issue whether their constitution is to be framed:

Wishes of
the people
to be
ascertained
in regard to
creation of
a new and
separate
Constituent
Assembly.

(a) in the existing Constituent Assembly ; or

(b) in a new and separate Constituent Assembly consisting of the representatives of those areas which decide not to participate in the existing Constituent Assembly. When this has been done, it will be possible to determine the authority or authorities to whom power should be transferred.

5. The Provincial Legislative Assemblies of Bengal and the Punjab (excluding the European members) will therefore each be asked to meet in two parts, one representing the Muslim-majority districts and the other the rest of the Province. For the purpose of determining the population of districts, the 1941 census figures will be taken as authoritative. The Muslim-majority districts in these two Provinces are set out in the Appendix to this announcement.

Bengal and
Punjab

6. The members of the two parts of each Legislative Assembly sitting separately will be empowered to vote whether or not the Province should be partitioned. If a simple majority of either part decides in favour of partition, division will take place and arrangements will be made accordingly.

Procedure
of partition.

7. Before the question as to partition is decided, it is desirable that the representatives of each part should know in advance which Constituent Assembly the Province as a whole would join in the event of the two parts subsequently deciding to remain united. Therefore, if any member of either Legislative Assembly so demands, there shall be held a meeting of all members of the Legislative Assembly (other than Europeans) at which a decision will be taken on the issue as to which Constituent Assembly the Province as a whole would join if it were decided by the two parts to remain united.

8. In the event of partition being decided upon, each part of the Legislative Assembly will, on behalf

of the areas they represent, decide which of the alternatives in para 4 above to adopt.

Boundary
Commission.

9. For the immediate purpose of deciding on the issue of partition, the members of the Legislative Assemblies of Bengal and the Punjab will sit in two parts according to Muslim-majority districts (as laid down in the Appendix) and non-Muslim-majority districts. This is only a preliminary step of a purely temporary nature as it is evident that for the purposes of a final partition of these Provinces a detailed investigation of boundary questions will be needed; and as soon as a decision involving partition has been taken for either Province, a Boundary Commission will be set up by the Governor-General, the membership and terms of reference of which will be settled in consultation with those concerned¹. It will be instructed to demarcate the boundaries of the two parts of the Punjab on the basis of ascertaining the contiguous majority areas of Muslims and non-Muslims. It will also be instructed to take into account other factors. Similar instructions will be given to the Bengal Boundary Commission. Until the report of a Boundary Commission has been put into effect, the provisional boundaries indicated in the Appendix will be used.

Sind

10. The Legislative Assembly of Sind (excluding the European members) will, at a special meeting also take its own decision on the alternatives in para 4 above.

11. The position of the N.-W.F.P. is exceptional. Two of the three representatives of this Province are already participating in the existing Constituent Assembly. But it is clear, in view of its geographical situation, and other considerations, that if the whole or any part of the Punjab decides not to join the

¹Two Boundary Commissions were set up for the two Provinces, Sir Cyril Radcliffe being the Chairman of both.

existing Constituent Assembly, it will be necessary to give the N.-W.F.P. an opportunity to reconsider its position. Accordingly, in such an event, a referendum will be made to the electors of the present Legislative Assembly in the N.-W.F.P. to choose which of the alternatives mentioned in para 4 above they wish to adopt. The referendum will be held under the aegis of the Governor-General and in consultation with the Provincial Government.

Referendum
in N.W.F.P.

12. British Baluchistan has elected a member but he has not taken his seat in the existing Constituent Assembly. In view of its geographical situation, this Province will also be given an opportunity to reconsider its position and to choose which of the alternatives in para 4 above to adopt. H. E. the Governor-General is examining how this can most appropriately be done.

British
Baluchistan.

13. Though Assam is predominantly a non-Muslim Province, the district of Sylhet which is contiguous to Bengal is predominantly Muslim. There has been a demand that, in the event of the partition of Bengal, Sylhet should be amalgamated with the Muslim part of Bengal. Accordingly, if it is decided that Bengal should be partitioned, a referendum will be held in Sylhet district under the aegis of the Governor-General and in consultation with the Assam Provincial Government to decide whether the district of Sylhet should continue to form part of the Assam Province or should be amalgamated with the new Province of Eastern Bengal, if that Province agrees. If the referendum results in favour of amalgamation with Eastern Bengal, a Boundary Commission with terms of reference similar to those for the Punjab and Bengal will be set up to demarcate the Muslim-majority areas of Sylhet district and contiguous Muslim-majority areas of adjoining districts, which will then be transferred to Eastern Bengal.

Referendum
in Sylhet
district
(Assam)

The rest of the Assam Province will in any case continue to participate in the proceedings of the existing Constituent Assembly.

Fresh
elections
in Bengal,
Punjab and
Sylhet.

14. If it is decided that Bengal and the Punjab should be partitioned, it will be necessary to hold fresh elections to choose their representatives on the scale of one for every million of population according to the principle contained in the Cabinet Mission's Plan of May 16th, 1946. Similar elections will also have to be held for Sylhet in the event of its being decided that this district should form part of East Bengal. The number of representatives to which each area would be entitled is as follows:—

<i>Province</i>	<i>General</i>	<i>Muslims</i>	<i>Sikhs</i>	<i>Total</i>
Sylhet District ...	1	2	Nil	3
West Bengal ...	15	4	Nil	19
East Bengal ...	12	29	Nil	41
West Punjab ...	3	12	2	17
East Punjab ...	6	4	2	12

15. In accordance with the mandates given to them, the representatives of the various areas will either join the existing Constituent Assembly or form the new Constituent Assembly.

16. Negotiations will have to be initiated as soon as possible on administrative consequences of any partition that may have been decided upon

Administra-
tive arrange-
ments
following
partition.

(a) between the representatives of the respective successor authorities about all subjects now dealt with by the Central Government including Defence, Finance and Communications ;

(b) between different successor authorities and His Majesty's Government for treaties in regard to matters arising out of the transfer of power ;

- (c) in the case of Provinces that may be partitioned, as to administration of all Provincial subjects, such as the division of assets and liabilities, the police and other Services, the High Courts, provincial institutions, etc.

17. Agreement with tribes of the North-West Frontier of India will have to be negotiated by the appropriate successor authority.

18. His Majesty's Government wish to make it clear that the decisions announced above relate only to British India and that their policy towards Indian States contained in the Cabinet Mission Memorandum of May 12th, 1946, remains unchanged.

Indian
States not
affected
by Mount-
batten
Plan

19. In order that the successor authorities may have time to prepare themselves to take over power, it is important that all the above processes should be completed as quickly as possible. To avoid delay, the different Provinces or parts of Provinces will proceed independently as far as practicable within the conditions of this Plan. The existing Constituent Assembly and the new Constituent Assembly (if formed) will proceed to frame Constitutions for their respective territories; they will of course be free to frame their own rules.

20. The major political parties have repeatedly emphasised their desire that there should be the earliest possible transfer of power in India. With this desire His Majesty's Government are in full sympathy, and they are willing to anticipate the date June 1948 for the handing over of power by the setting up of an independent Indian Government or Governments at an even earlier date. Accordingly, as the most expeditious, and indeed the only practicable way of meeting this desire, His Majesty's Government propose to introduce legislation during the current session for the transfer of power this year

Transfer of
power in
1947 on a
Dominion
Status
basis

on a Dominion Status basis to one or two successor authorities according to the decisions taken as a result of this announcement. This will be without prejudice to the right of the Indian Constituent Assemblies to decide in due course whether or not the part of India in respect of which they have authority will remain within the British Commonwealth.

21. H. E. the Governor-General will from time to time make such further announcements as may be necessary in regard to procedure or any other matters for carrying out the above arrangements.

Appendix

Partition of
the Punjab
and Bengal

Muslim-majority districts of the Punjab and Bengal according to 1941 census.

1. Punjab.

Lahore Division: Gujranwala, Gurdaspur, Lahore, Sheikhpura, Sialkot.

Rawalpindi Division: Attock, Gujrat, Jhelum, Mianwali, Rawalpindi, Shahpur.

Multan Division: Dera Ghazi Khan, Jhang, Lyallpur, Montgomery, Multan, Muzaffargarh.

2. Bengal.

Chittagong Division: Chittagong, Noakhali, Tipperah.

Dacca Division: Bakarganj, Dacca, Faridpur, Mymensingh.

Presidency Division: Jessore, Murshidabad, Nadia.

Rajshahi Division: Bogra, Dinajpur, Malda, Pabna, Rajshahi, Rangpur.

41. BROADCAST SPEECH OF LORD MOUNTBATTEN,¹ JUNE 3, 1947.

Since my arrival in India at the end of March I have spent almost every day in consultation with as many of the leaders and representatives of as many communities and interests as possible.

Discussions
with Indian
leaders

* * *

My first course, in all my discussions, was therefore to urge the political leaders to accept unreservedly the Cabinet Mission Plan of 16th May, 1946. In my opinion that Plan provides the best arrangement that can be devised to meet the interests of all the communities of India. To my great regret it has been impossible to obtain agreement either on the Cabinet Mission Plan, or on any other plan that would preserve the unity of India. But there can be no question of coercing any large areas, in which one community has a majority, to live against their will under a Government in which another community has a majority. And the only alternative to coercion is partition.

No agree-
ment on
Cabinet
Mission
Plan

"Only alter-
native to
coercion is
partition".

But when the Muslim League demanded the partition of India, Congress used the same arguments for demanding, in that event, the partition of certain Provinces. To my mind this argument is unassailable. In fact, neither side proved willing to leave a substantial area in which their community have a majority under the Government of the other. I am, of course, just as much opposed to the partition of Provinces as I am to the partition of India herself and for the same basic reasons.

Partition of
Provinces

For just as I feel there is an Indian consciousness which should transcend communal differences, so

¹ Viceroy and Governor-General of India from March to August 14, 1947. Governor-General of Dominion of India from August 15, 1947.

Procedure
to ascertain
people's
decision on
partition

I feel there is a Punjabi and Bengali consciousness which has evoked a loyalty to their Provinces.

And so I felt it was essential that the people of India themselves should decide this question of partition.

The procedure for enabling them to decide it for themselves, whether they want the British to hand over power to one or two Governments, is set out in the statement which will be read to you. But there are one or two points on which I should like to add a note of explanation.

Boundaries
of parti-
tioned
Provinces

It was necessary in order to ascertain the will of the people of the Punjab, Bengal and part of Assam to lay down boundaries between the Muslim-majority areas and the remaining areas but I want to make it clear that the ultimate boundaries will be settled by a Boundary Commission and will almost certainly not be identical with those which have been provisionally adopted.

Sikhs

We have given careful consideration to the position of the Sikhs. This valiant community forms about an eighth of the population of the Punjab, but they are so distributed that any partition of this Province will inevitably divide them. All of us who have the good of the Sikh community at heart are very sorry to think that partition of the Punjab, which they themselves desire, cannot avoid splitting them to a greater or lesser extent. The exact degree of the split will be left to the Boundary Commission on which they will of course be represented.

The whole Plan may not be perfect; but like all plans, its success will depend on the spirit of goodwill with which it is carried out. I have always felt that once it was decided in what way to transfer power the transfer should take place at the earliest possible moment, but the dilemma was that if we waited until a constitutional set-up for all India was agreed, we

should have to wait a long time, particularly if partition were decided on, whereas if we handed over power before the Constituent Assemblies had finished their work we should leave the country without a Constitution. The solution to this dilemma, which I put forward, is that His Majesty's Government should transfer power now to one or two Governments of British India, each having Dominion Status as soon as the necessary arrangements can be made. This I hope will be within the next few months. I am glad to announce that His Majesty's Government have accepted this proposal and are already having legislation prepared for introduction in Parliament this session. As a result of these decisions the special function of the India Office will no longer have to be carried out, and some other machinery will be set up to conduct future relations between His Majesty's Government and India.

Immediate transfer of power to one or two Governments, each having Dominion Status

Abolition of India Office

I wish to emphasise that this legislation will not impose any restriction on the power of India as a whole, or of the two States if there is partition, to decide in the future their relationship to each other and to other member-States of the British Commonwealth.

Relationship with Commonwealth

42. BROADCAST SPEECH OF PANDIT NEHRU, JUNE 3, 1947.

Friends and Comrades, nearly nine months ago, soon after my assumption of office I spoke to you from this place. I told you then that we are on the march and the goal has still to be reached. There were many difficulties and obstacles on the way and our journey's end might not be near, for that end was not the assumption of office in the Government of India but the achievement of the full independence of India and the establishment of a co-operative commonwealth in which all will be equal sharers in opportunity and in all things that give meaning and value to life.

Object of Interim Government

Nine months have passed, months of sore trial and difficulty, of anxiety and something even of heartbreak. Yet looking back at this period with its suffering and sorrow for our people there is much on the credit side also, for India has advanced nationally and internationally and is respected to-day in the councils of the world.

Balance
sheet of
nine months
of Interim
Govern-
ment

In the domestic sphere something substantial has been achieved though the burden on the common man still continues to be terribly heavy and millions lack food and cloth and other necessities of life. Many vast schemes of development are nearly ready and yet it is true that most of our dreams about the brave things we are going to accomplish have still to be realised.

Communal
riots

You know well the difficulties which the country had to face, economic, political and communal. These months have been full of tragedy for millions and the burden on those who have the governance of the country in their hands has been great indeed. My mind is heavy with the thought of the sufferings of our people in the areas of disturbance, the thousands who are dead and those, especially our womenfolk, who have suffered agony worse than death. To their families and to the innumerable people who have been uprooted from their homes and rendered destitutes I offer my deepest sympathy and assurance that we shall do all in our power to bring relief. We must see to it that such tragedies do not happen again.

At no time have we lost faith in the great destiny of India which takes shape even though with travail and suffering. My great regret has been that during this period, owing to excess of work, I have been unable to visit the numerous towns and villages of India, as I used to do, to meet my people and to learn about their troubles at first-hand.

To-day I am speaking to you on another historic occasion when a vital change affecting the future of India is proposed. You have just heard an announcement on behalf of the British Government. This announcement lays down a procedure for self-determination in certain areas of India. It envisages on the one hand the possibility of these areas seceding from India; on the other, it promises a big advance towards complete independence. Such a big change must have the full concurrence of the people before effect can be given to it, for it must always be remembered that the future of India can only be decided by the people of India, and not by any outside authority, however friendly.

Independence
with
partition

These proposals will be placed soon before the representative assemblies of the people for consideration. But meanwhile, the sands of time run out and decisions cannot await the normal course of events. So while we must necessarily abide by what the people finally decide we had to come to certain decisions ourselves and to recommend them to the people for acceptance. We have, therefore, decided to accept these proposals and to recommend to our larger committees that they do likewise. It is with no joy in my heart that I commend these proposals to you, though I have no doubt in my mind that it is the right course. For generations we have dreamt and struggled for a free, independent and united India. The proposal to allow certain parts to secede if they so will is painful for any of us to contemplate. Nevertheless I am convinced that our present decision is the right one even from the larger viewpoint. The United India that we have laboured for was not one of compulsion and of coercion but a free and willing association of a free people. It may be that in this way we shall reach that united India sooner than otherwise and then we shall have a stronger and more secure foundation.

Acceptance
of partition

We little men are serving a great cause, but because the cause is great something of that greatness falls upon us also. Mighty forces are at work in the world to-day and in India, and I have no doubt that we are ushering in a period of greatness for India. The India of geography, of history and tradition, the India of minds and hearts, cannot change.

On this historic occasion each one of us must pray that he might be guided aright in the services of his motherland and humanity at large. We stand on a watershed dividing the past from the future. Let us bury that past in so far as it is bad and forget all bitterness and recriminations; let there be moderation in speech and in writing; let there be strength and perseverance in adherence to the cause and the ideals we have at heart. Let us face the future not with easy optimism or any complacency or weakness but with confidence and firm faith in India.

There has been violence, shameful, degrading and revolting violence, in various parts of the country. This must end. We are determined to end it. We must make it clear that political ends are not to be achieved by methods of violence, now or in future.

On this eve of great changes in India we have to make a fresh start with clear vision and firm mind, with steadfastness and tolerance and with a stout heart. We shall not wish ill of anyone but think of every Indian as our brother and comrade. The good of four hundred millions of Indians must be our supreme objective. We shall seek to build anew our relations with England on a friendly and co-operative basis forgetting the past which has leaned so heavily on us.

I should like to express on this occasion my deep appreciation of the labours of the Viceroy, Lord Mountbatten, since his arrival here at a critical juncture in our history.

Inevitably, on every occasion of crises and difficulties we think of our great leader Mahatma Gandhi who has led us unfalteringly for over a generation through darkness and sorrow to the threshold of our freedom. To him we once again pay our homage. His blessings and wise counsel will happily be with us in the momentous years to come as always.

Leadership
of Gandhi

With a firm faith in our future I appeal to you to co-operate in the great task ahead and to march together to the haven of freedom for all in India.

Jai Hind.

43. MR. JINNAH'S BROADCAST SPEECH, JUNE 3, 1947.

I am glad that I am afforded the opportunity to speak to you directly through this radio from Delhi. This is the first time, I believe, that a non-official has been afforded an opportunity to address the peoples through the medium of this powerful instrument, direct to the peoples on political matters. It augurs well. And I hope in the future I shall have greater facilities to enable me to voice my views and opinion which will reach directly to you life-warm rather than in the cold print of the newspapers.

The statement of His Majesty's Government embodying the Plan for transfer of power to the peoples of India has already been broadcast and will be released to the press to be published in India and abroad to-morrow morning. It gives the outlines of the Plan for us to give it our most earnest consideration. We have to examine it coolly, calmly and dispassionately. We must remember that we have to take momentous decisions and handle grave issues facing us in the solution of the complex political problem of this great sub-continent inhabited by 400 million people. The world has no parallel of the most onerous and most difficult task which we have to perform.

Great responsibilities lie particularly on the shoulders of Indian leaders. Therefore, we must galvanise and concentrate all our energies to see that transfer of power is effected in peaceful and orderly manner. I must earnestly appeal to every community and particularly to Muslim India to maintain peace and order. We must examine the Plan, its letter and spirit and come to our conclusions and take our decisions. I pray to God that at this critical moment He may guide us and enable us to discharge our responsibilities in a wise and statesmanlike manner having regard to the *sum toto* or the Plan as a whole.

Criticism of
Mount-
batten
Plan

It is clear that the Plan does not meet in some important respects our point of view; and we cannot say or feel that we are satisfied or agree with some of the matters dealt with by the Plan. It is for us now to consider whether the Plan as presented to us by H. M. G. should be accepted by us as a compromise or a settlement. On this point I do not wish to pre-judge the decisions of the Council of the All-India Muslim League which has been summoned to meet on Monday, June 9; and the final decision can only be taken by that Council according to our constitution, precedents and practice. But so far as I have been able to gather, on the whole I find the reaction in the Muslim League circles in Delhi has been hopeful. Of course, the Plan has got to be very carefully examined in its pros and cons before a final decision can be taken.

I must say that I feel that the Viceroy has battled against various forces very bravely and the impression that he has left in my mind is that he was actuated by a high sense of fairness and impartiality. It is up to us now to make his task less difficult and help him as far as it lies in our power in order that he may fulfil his mission of transferring power to

the peoples of India in a peaceful and orderly manner.

Now, the Plan that has been broadcast already makes it clear in paragraph 11 that referendum will be made to the electorates of the present Legislative Assembly in N.-W.F.P. who will choose which of the alternatives in paragraph 4 they wish to adopt; and the referendum will be held under the aegis of the Governor-General in consultation with the Provincial Government. Hence it is clear that the verdict and the mandate of the people of the Frontier Province will be obtained as to whether they want to join the Pakistan Constituent Assembly or the Hindustan Constituent Assembly. In these circumstances, I request the provincial Muslim League of the Frontier to withdraw the movement of peaceful civil disobedience which they had perforce to resort to; and I call upon all the leaders of the Muslim League and Mussalmans generally to organise our people to face this referendum with hope and courage and I feel confident that the people of the Frontier will give their verdict by a solid vote to join the Pakistan Constituent Assembly.

I cannot but express my appreciation of the sufferings and sacrifices made by all classes of Mussalmans and particularly the great part that the women of the Frontier played in the fight for our civil liberties. Without apportioning blame, and this is hardly the moment to do so, I deeply sympathise with all those who have suffered, those who died, and whose properties were subjected to destruction, and I fervently hope that the Frontier will go through this referendum in a peaceful manner and it should be the anxiety of everyone to obtain a fair, free and true verdict of the people. Once again, I most earnestly appeal to all to maintain peace and order. Pakistan Zindabad.

THE INDIAN INDEPENDENCE ACT, JULY, 1947.

An Act to make provision for the setting up in India of two independent Dominions, to substitute other provisions for certain provisions of the Government of India Act, 1935, which apply outside those Dominions, and to provide for other matters consequential on or connected with the setting up of those Dominions.

Be it enacted by the King's Most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

1. The New Dominions.

(1) As from the 15th day of August, 1947, two independent Dominions shall be set up in India, to be known respectively as India and Pakistan.

(2) The said Dominions are hereafter in this Act referred to as "the new Dominions" and the said 15th day of August is hereafter in this Act referred to as "the appointed day."

2. Territories of the New Dominions.

(1) Subject to the provisions of sub-sections (3) and (4) of this section, the territories of India shall be the territories under the sovereignty of His Majesty which, immediately before the appointed day, were included in British India except the territories which under sub-section (2) of this section are to be the territories of Pakistan.

(2) Subject to the provisions of sub-sections (3) and (4) of this section, the territories of Pakistan shall be (a) the territories which, on the appointed day, are included in the Provinces of East Bengal and West Punjab, as constituted under the two following sections; (b) the territories which, at the

Two
independent
Dominions

Territories
of India

Territories
of Pakistan

date of the passing of this Act, are included in the Province of Sind and the Chief Commissioner's Province of British Baluchistan; and (c) if, whether before or after the passing of this Act but before the appointed day, the Governor-General declares that the majority of the valid votes cast in the referendum which, at the date of the passing of this Act, is being or has recently been held in that behalf under his authority in the North-West Frontier Province are in favour of representatives of that Province taking part in the Constituent Assembly of Pakistan, the territories which, at the date of the passing of this Act, are included in that Province.

(3) Nothing in this section shall prevent any area being at any time included in or excluded from either of the new Dominions, so, however, that—(a) no area, not forming part of the territories specified in sub-section (1) or, as the case may be, sub-section (2), of this section shall be included in either Dominion without the consent of that Dominion; and (b) no area which forms part of the territories specified in the said sub-section (1) or, as the case may be the said sub-section (2) or which has after the appointed day been included in either Dominion, shall be excluded from that Dominion without the consent of that Dominion.

(4) Without prejudice to the generality of the provisions of sub-section (3) of this section, nothing in this section shall be construed as preventing the accession of Indian States to either of the new Dominions.

Indian
States

3. *Bengal and Assam*

(1) As from the appointed day—(a) the Province of Bengal, as constituted under the Government of India Act, 1935, shall cease to exist; and (b) there shall be constituted in lieu thereof two new Provinces, to be known respectively as East Bengal and West Bengal.

(2) If, whether before or after the passing of this Act, but before the appointed day, the Governor-General declares that the majority of the valid votes cast in the referendum which, at the date of the passing of this Act, is being or has recently been held in that behalf under his authority in the district of Sylhet are in favour of that district forming part of the new Province of East Bengal then, as from that day, a part of the Province of Assam shall, in accordance with the provisions of sub-section (3) of this section, form part of the new Province of East Bengal.

Boundaries
of two
Bengals

(3) The boundaries of the new Provinces aforesaid and, in the event mentioned in sub-section (2) of this section, the boundaries after the appointed day of the Province of Assam, shall be such as may be determined, whether before or after the appointed day, by the award of a Boundary Commission appointed or to be appointed by the Governor-General in that behalf, but until the boundaries are so determined,

(a) the Bengal Districts specified in the First Schedule to this Act, together with, in the event mentioned in sub-section (2) of this section, the Assam district of Sylhet, shall be treated as the territories which are to be comprised in the new Province of East Bengal; (b) the remainder of the territories comprised at the date of the passing of this Act in the Province of Bengal shall be treated as the territories which are to be comprised in the new Province of West Bengal; and (c) in the event mentioned in sub-section (2) of this section the district of Sylhet shall be excluded from the Province of Assam.

(4) In this section, the expression "award" means, in relation to a Boundary Commission, the decision of the Chairman of that Commission contained in his report to the Governor-General at the conclusion of the Commission's proceedings.

4. *The Punjab.*

(1) As from the appointed day (a) the Province of the Punjab, as constituted under the Government of India Act, 1935, shall cease to exist; and (b) there shall be constituted two new Provinces, to be known respectively as West Punjab and East Punjab.

(2) The boundaries of the said new Provinces shall be such as may be determined, whether before or after the appointed day, by the award of a Boundary Commission appointed or to be appointed by the Governor-General in that behalf, but until the boundaries are so determined (a) the districts specified in the Second Schedule to this Act shall be treated as the territories to be comprised in the new Province of West Punjab; and (b) the remainder of the territories comprised at the date of the passing of this Act in the Province of the Punjab shall be treated as the territories which are to be comprised in the new Province of East Punjab.

Boundaries
of two
Punjab

(3) In this section, the expression "award" means, in relation to a Boundary Commission, the decision of the Chairman of that Commission contained in his report to the Governor-General at the conclusion of the Commission's proceedings.

5. *The Governor-General of the new Dominions.*

For each of the new Dominions, there shall be a Governor-General who shall be appointed by His Majesty and shall represent His Majesty for the purpose of the government of the Dominion:

Provided that, unless and until provision to the contrary is made by a law of the Legislature of either of the new Dominions, the same person may be Governor-General of both the new Dominions.

6. *Legislation for the new Dominions.*

(1) The Legislature of each of the new Dominions shall have full power to make laws for that

Dominion, including laws having extra-territorial operation.

No limitation to law-making power of Dominion Legislature

(2) No law and no provision of any law made by the Legislature of either of the new Dominions shall be void or inoperative on the ground that it is repugnant to the law of England, or to the provisions of this or any existing or future Act of Parliament of the United Kingdom, or to any order, rule or regulation made under any such Act, and the powers of the Legislature of each Dominion include the power to repeal or amend any such Act, order, rule or regulation in so far as it is part of the law of the Dominion.

(3) The Governor-General of each of the new Dominions shall have full power to assent in His Majesty's name to any law of the Legislature of that Dominion and so much of any Act as relates to the disallowance of laws by His Majesty or the reservation of laws for the signification of His Majesty's pleasure thereon or the suspension of the operation of laws until the signification of His Majesty's pleasure thereon shall not apply to laws of the Legislature of either of the new Dominions.

No Act of British Parliament will apply to either Dominion

(4) No Act of Parliament of the United Kingdom passed on or after the appointed day shall extend, or be deemed to extend, to either of the new Dominions as part of the law of that Dominion unless it is extended thereto by a law of the Legislature of the Dominion.

(5) No order in Council made on or after the appointed day under any Act passed before the appointed day, and no order, rule or other instrument made on or after the appointed day under any such Act by any United Kingdom Minister or other authority, shall extend, or be deemed to extend, to either of the new Dominions as part of the law of that Dominion.

(6) The power referred to in sub-section (1) of this section extends to the making of laws limiting:

for the future the powers of the Legislature of the Dominion.

7. *Consequences of the setting up of the new Dominions.*

(1) As from the appointed day (a) His Majesty's Government in the United Kingdom have no responsibility as respects the government of any of the territories which, immediately before that day, were included in British India ;

British Government's responsibility for British India ended

(b) the suzerainty of His Majesty over the Indian States lapses, and with it, all treaties and agreements in force at the date of the passing of this Act between His Majesty and the rulers of Indian States, all functions exercisable by His Majesty at that date with respect to Indian States, all obligations of His Majesty existing at that date towards Indian States or the rulers thereof, and all powers, rights, authority or jurisdiction exercisable by His Majesty at that date in or in relation to Indian States by treaty, grant, usage, sufferance or otherwise ; and

Lapse of suzerainty over Indian States

(c) there lapse also any treaties or agreements in force at the date of the passing of this Act between His Majesty and any persons having authority in the tribal areas, any obligations of His Majesty existing at that date to any such persons or with respect³ to the tribal areas, and all powers, rights, authority or jurisdiction exercisable at that date by His Majesty in or in relation to the tribal areas by treaty, grant, usage, sufferance or otherwise :

Lapse of treaties and agreements relating to tribal areas

Provided that, notwithstanding anything in paragraph (b) or paragraph (c) of this sub-section, effect shall, as nearly as may be, continue to be given to the provisions of any such agreement as is therein referred to which relate to customs, transit and communications, posts and telegraphs, or other like matters, until the provisions in question are denounced by the ruler of the Indian State or person having

Provisions relating to customs, communications, etc.

authority in the tribal areas on the one hand, or by the Dominion or Province or other part thereof concerned on the other hand, or are superseded by subsequent agreements.

Change in
Royal Title

(2) The assent of the Parliament of the United Kingdom is hereby given to the omission from the Royal Style and Titles of the words "*Indiæ Imperator*" and the words "Emperor of India" and to the issue by His Majesty for that purpose of His Royal Proclamation under the Great Seal of the Realm.

8. Temporary provision as to government of each of the new Dominions.

Constituent
Assembly
to serve as
Dominion
Legislature

(1) In the case of each of the new Dominions, the powers of the Legislature of the Dominion shall, for the purpose of making provision as to the constitution of the Dominion, be exercisable in the first instance by the Constituent Assembly of that Dominion, and references in this Act to the Legislature of the Dominion shall be construed accordingly.

Act of 1935
will continue
in operation
subject to
modifica-
tions.

(2) Except in so far as other provision is made by or in accordance with a law made by the Constituent Assembly of the Dominion under sub-section (1) of this section, each of the new Dominions and all Provinces and other parts thereof shall be governed as nearly as may be in accordance with the Government of India Act, 1935; and the provisions of that Act, and of the Orders-in-Council, rules and other instruments made thereunder, shall, so far as applicable, and subject to any express provisions of this Act, and with such omissions, additions, adaptations and modifications as may be specified in orders of the Governor-General under the next succeeding section, have effect accordingly:

Provided that (a) the said provisions shall apply in relation to each of the new Dominions and nothing

in this sub-section shall be construed as continuing on or after the appointed day any Central Government or Legislature common to both the new Dominions; (b) nothing in this sub-section shall be construed as continuing in force on or after the appointed day any form of control by His Majesty's Government in the United Kingdom over the affairs of the new Dominions or of any Province or other part thereof; (c) so much of the said provisions as requires the Governor-General or any Governor to act in his discretion or exercise his individual judgement as respects any matter shall cease to have effect as from the appointed day; (d) as from the appointed day, no Provincial Bill shall be reserved under the Government of India Act, 1935, for the signification of His Majesty's pleasure, and no Provincial Act shall be disallowed by His Majesty thereunder; and (e) the powers of the Federal Legislature or Indian Legislature under that Act as in force in relation to each Dominion, shall, in the first instance, be exercisable by the Constituent Assembly of the Dominion in addition to the powers exercisable by that Assembly under sub-section (1) of this section.

Modifica-
tions of Act
of 1935

(3) Any provision of the Government of India Act, 1935, which, as applied to either of the new Dominions by sub-section (2) of this section and the orders therein referred to, operates to limit the power of the Legislature of that Dominion shall, unless and until other provision is made by or in accordance with a law made by the Constituent Assembly of the Dominion in accordance with the provisions of sub-section (1) of this section, have the like effect as a law of the Legislature of the Dominion limiting for the future the powers of that Legislature.

9. *Orders for bringing this Act into force.*

(1) The Governor-General shall by order make such provision as appears to him to be necessary or

Governor-General
empowered
to issue
orders on
various
subjects
with a view
to bringing
this Act
into force

expedient (a) for bringing the provisions of this Act into effective operation; (b) for dividing between the new Dominions, and between the new Provinces, to be constituted under this Act, the powers, rights, property, duties and liabilities of the Governor-General-in-Council or, as the case may be, of the relevant Provinces which, under this Act, are to cease to exist; (c) for making omissions from, additions to, and adaptations and modifications of, the Government of India Act, 1935, and the Orders-in-Council, rules and other instruments made thereunder, in their application to the separate new Dominions; (d) for removing difficulties arising in connection with the transition to the provisions of this Act; (e) for authorising the carrying on of the business of the Governor-General-in-Council between the passing of this Act and the appointed day otherwise than in accordance with the provisions in that behalf of the Ninth Schedule to the Government of India Act, 1935; (f) for enabling agreements to be entered into, and other acts done, on behalf of either of the new Dominions before the appointed day; (g) for authorising the continued carrying on for the time being on behalf of the new Dominions, or on behalf of any two or more of the said new Provinces, of services and activities previously carried on on behalf of British India as a whole or on behalf of the former Provinces which those new Provinces represent; (h) for regulating the monetary system and any matters pertaining to the Reserve Bank of India; and (i) so far as it appears necessary or expedient in connection with any of the matters aforesaid, for varying the constitution, powers or jurisdiction of any Legislature, court or other authority in the new Dominions and creating new Legislatures, courts or other authorities therein.

(2) The powers conferred by this section on the Governor-General shall, in relation to their respective

Provinces, be exercisable also by the Governors of the Provinces which under this Act are to cease to exist ; and those powers shall, for the purposes of the Government of India Act, 1935, be deemed to be matters as respects which the Governors are, under that Act, to exercise their individual judgement.

Similar power conferred on Governors of partitioned Provinces

(3) This section shall be deemed to have had effect as from the third day of June, 1947, and any order of the Governor-General or any Governor made on or after that date as to any matter shall have effect accordingly, and any order made under this section may be made so as to be retrospective to any date not earlier than the said third day of June :

The orders of Governor-General and Governors to have retrospective effect from June 3, 1947

Provided that no person shall be deemed to be guilty of an offence by reason of so much of any such order as makes any provision thereof retrospective to any date before the making thereof.

(4) Any orders made under this section, whether before or after the appointed day, shall have effect (a) up to the appointed day, in British India ; (b) on and after the appointed day, in the new Dominion or Dominions concerned ; and (c) outside British India, or as the case may be, outside the new Dominion or Dominions concerned, to such extent, whether before, on or after the appointed day, as a law of the Legislature of the Dominion or Dominions concerned would have on or after the appointed day, but shall, in the case of each of the Dominions, be subject to the same powers of repeal and amendment as laws of the Legislature of that Dominion.

(5) No order shall be made under this section, by the Governor of any Province, after the appointed day, or, by the Governor-General, after the 31st day of March, 1948, or such earlier date as may be determined, in the case of either Dominion, by any law of the Legislature of that Dominion.

(6) If it appears that a part of the Province of Assam is, on the appointed day, to become part of the new Province of East Bengal, the preceding provisions of this section shall have effect as if under this Act the Province of Assam was to cease to exist on the appointed day and be reconstituted on that day as a new Province.

10. Secretary of State's Services, etc.

Appoint-
ment by
Secretary
of State dis-
continued

(1) The provisions of this Act keeping in force provisions of the Government of India Act, 1935, shall not continue in force the provisions of that Act relating to appointments to the Civil Service of, and civil posts under, the Crown in India by the Secretary of State, or the provisions of that Act relating to the reservation of posts.

Protection
of existing
rights of
civil ser-
vants and
judges

(2) Every person who (a) having been appointed by the Secretary of State or Secretary of State in Council to a Civil Service of the Crown in India continues on and after the appointed day to serve under the Government of either of the new Dominions or of any Province or part thereof; or (b) having been appointed by His Majesty before the appointed day to be a judge of the Federal Court or of any Court which is a High Court within the meaning of the Government of India Act, 1935, continues on and after the appointed day to serve as a judge in either of the new Dominions, shall be entitled to receive from the Governments of the Dominions and Provinces or parts which he is from time to time serving, or, as the case may be, which are served by the courts in which he is from time to time a judge, the same conditions of service as respects remuneration, leave and pension, and the same rights as respects disciplinary matter or as the case may be, as respects the tenure of his office, or rights as similar thereto as changed circumstances may permit, as that person was entitled to immediately before the appointed day.

(3) Nothing in this Act shall be construed as enabling the rights and liabilities of any person with respect to the family pension funds vested in Commissioners under section 273 of the Government of India Act, 1935, to be governed otherwise than by Orders-in-Council made (whether before or after the passing of this Act or the appointed day) by His Majesty-in-Council and rules made (whether before or after the passing of this Act or the appointed day) by a Secretary of State or such other Minister of the Crown as may be designated in that behalf by Order-in-Council under the Ministers of the Crown (Transfer of Functions) Act, 1946.

Family
Pension
Funds

11. Indian armed forces.

(1) The orders to be made by the Governor-General under the preceding provisions of this Act shall make provision for the division of the Indian armed forces of His Majesty between the new Dominions, and for the command and governance of those forces until the division is completed.

Division of
Indian
armed
forces

(2) As from the appointed day, while any member of His Majesty's forces, other than His Majesty's Indian forces, is attached to or serving with any of His Majesty's Indian forces (a) he shall, subject to any provision to the contrary made by a law of the Legislature of the Dominion or Dominions concerned or by any order of the Governor-General under the preceding provisions of this Act, have, in relation to the Indian forces in question, the powers of command and punishment appropriate to his rank and functions; but (b) nothing in any enactment in force at the date of the passing of this Act shall render him subject in any way to the law governing the Indian forces in question.

12. British Forces in India.

(1) Nothing in this Act affects the jurisdiction or authority of His Majesty's Government in the United

British
authority
on British
forces in
India will
continue.

Kingdom, or of the Admiralty, the Army Council, or the Air Council or of any other United Kingdom authority, in relation to any of His Majesty's forces which may, on or after the appointed day, be in either of the new Dominions or elsewhere in the territories which, before the appointed day, were included in India, not being Indian forces.

(2) In its application in relation to His Majesty's military forces, other than Indian forces, the Army Act shall have effect on or after the appointed day (a) as if His Majesty's Indian forces were not included in the expressions "the forces", "His Majesty's forces" and "the regular forces"; and (b) subject to the further modifications specified in Parts (I) and (II) of the Third Schedule to this Act.

(3) Subject to the provisions of sub-section (2) of this section, and to any provisions of any law of the Legislature of the Dominion concerned, all civil authorities in the new Dominions, and, subject as aforesaid and subject also to the provisions of the last preceding section, all service authorities in the new Dominions shall, in those Dominions and in the other territories which were included in India before the appointed day, perform in relation to His Majesty's military forces, not being Indian forces, the same functions as were, before the appointed day, performed by them, or by the authorities corresponding to them, whether by virtue of the Army Act or otherwise, and the matters for which provision is to be made by orders of the Governor-General under the preceding provisions of this Act shall include the facilitating of the withdrawal from the new Dominions and other territories aforesaid of His Majesty's military forces, not being Indian forces.

(4) The provisions of sub-sections (2) and (3) of this section shall apply in relation to the air forces of His Majesty, not being Indian air forces, as they apply in relation to His Majesty's military forces, subject, however, to the necessary adaptations, and, in particular, as if (a) for the references to the Army Act there were substituted references to the Air Force Act; and (b) for the reference to Part (II) of the Third Schedule to this Act there were substituted a reference to Part (III) of that Schedule. Air Forces

13. Naval Forces.

(1) In the application of the Naval Discipline Act to His Majesty's Naval Forces, other than Indian Naval Forces, references to His Majesty's Navy and His Majesty's ships shall not, as from the appointed day, include references to His Majesty's Indian Navy or the ships thereof.

(2) In the application of the Naval Discipline Act by virtue of any law made in India before the appointed day to Indian Naval Forces, references to His Majesty's Navy and His Majesty's ships shall, as from the appointed day, be deemed to be, and to be only, references to His Majesty's Indian Navy and the ships thereof.

(3) In Section 90 (B) of the Naval Discipline Act (which, in certain cases, subjects officers and men of the Royal Navy and Royal Marines to the law and customs of the ships and naval forces of other parts of His Majesty's dominions) the words "or of India" shall be repealed as from the appointed day, wherever those words occur.

14. Provisions as to the Secretary of State and the Auditor of Indian Home Accounts.

(1) A Secretary of State, or such other Minister of the Crown as may be designated in that behalf by

Functions
of Secretary
of State

Order-in-Council under the Ministers of the Crown (Transfer of Functions) Act, 1946, is hereby authorised to continue for the time being the performance, on behalf of whatever Government or Governments may be concerned, of functions as to the making of payments and other matters similar to the functions which, up to the appointed day, the Secretary of State was performing on behalf of Governments constituted or continued under the Government of India Act, 1935.

(2) The functions referred to in sub-section (1) of this section include functions as respects the management of, and the making of payments in respect of, Government debt, and any enactments relating to such debt shall have effect accordingly:

Provided that nothing in this sub-section shall be construed as continuing in force so much of any enactment as empowers the Secretary of State to contract sterling loans on behalf of any such Government as aforesaid or as applying to the Government of either of the new Dominions the prohibition imposed on the Governor-General-in-Council by section 315 of the Government of India Act, 1935, as respects the contracting of sterling loans.

Abolition
of Advisers
of Secretary
of State

(3) As from the appointed day, there shall not be any such Advisers of the Secretary of State as are provided for by section 278 of the Government of India Act, 1935, and that section, and any provisions of that Act which require the Secretary of State to obtain the concurrence of his Advisers, are hereby repealed as from that day.

(4) The Auditor of Indian Home Accounts is hereby authorised to continue for the time being to exercise his functions as respects the accounts of the Secretary of State or any such other Minister of the Crown as is mentioned in sub-section (1) of this section, both in respect of activities before, and in respect of activities after, the appointed day, in the same manner

as nearly as may be as he would have done if this Act had not passed.

*15. Legal proceedings by and against the
Secretary of State.*

(1) Notwithstanding any thing in this Act, and in particular, notwithstanding any of the provisions of the last preceding section, any provision of any enactment which, but for the passing of this Act, would authorise legal proceedings to be taken, in India or elsewhere, by or against the Secretary of State in respect of any right or liability of India or any part of India shall cease to have effect on the appointed day, and any legal proceedings pending by virtue of any such provision on the appointed day shall, by virtue of this Act, abate on the appointed day, so far as the Secretary of State is concerned.

(2) Subject to the provisions of this sub-section, any legal proceedings which, but for the passing of this Act, could have been brought by or against the Secretary of State in respect of any right or liability of India, or any part of India, shall instead be brought (a) in the case of proceedings in the United Kingdom, by or against the High Commissioner; (b) in the case of other proceedings, by or against such person as may be designated by order of the Governor-General under the preceding provisions of this Act or otherwise by the law of the new Dominion concerned, and any legal proceedings by or against the Secretary of State in respect of any such right or liability as aforesaid which are pending immediately before the appointed day shall be continued by or against the High Commissioner or, as the case may be, the person designated as aforesaid:

High Com-
missioner

Provided that, at any time after the appointed day, the right conferred by this sub-section to bring or continue proceedings may, whether the proceedings are by, or are against, the High Commissioner

or person designated as aforesaid, be withdrawn by a law of the Legislature of either of the new Dominions so far as the Dominion is concerned, and any such law may operate as respects proceedings pending at the date of the passing of the law.

(3) In this section, the expression "The High Commissioner" means, in relation to each of the new Dominions, any such officer as may for the time being be authorised to perform in the United Kingdom, in relation to that Dominion, functions similar to those performed before the appointed day, in relation to the Governor-General-in-Council, by the High Commissioner referred to in section 302 of the Government of India Act, 1935; and any legal proceedings which, immediately before the appointed day, are the subject of an appeal to His Majesty-in-Council, or of a petition for special leave to appeal to His Majesty-in-Council, shall be treated for the purposes of this section as legal proceedings pending in the United Kingdom.

16. Aden.

(1) Sub-sections 2 to 4 of section 288 of the Government of India Act, 1935 (which confer on His Majesty power to make by Order-in-Council provision for the government of Aden) shall cease to have effect and the British Settlements Acts, 1887 and 1945, (which authorise His Majesty to make laws and establish institutions for British settlements as defined in those Acts) shall apply in relation to Aden as if it were a British settlement as so defined.

(2) Notwithstanding the repeal of the said sub-sections 2 to 4, the Orders-in-Council in force thereunder at the date of the passing of this Act shall continue in force, but the said Orders-in-Council, any other Orders-in-Council made under the Government of India Act, 1935, in so far as they apply to Aden, and any enactments applied to Aden

Aden to be separated from India and made a "British settlement"

or amended in relation to Aden by any such Orders-in-Council as aforesaid, may be repealed, revoked or amended under the powers of the British Settlements Acts, 1887 and 1945.

(3) Unless and until provision to the contrary is made as respects Aden under the powers of the British Settlements Acts, 1887 and 1945, or, as respects the new Dominion in question, by a law of the Legislature of that Dominion, the provisions of the said Orders-in-Council and enactments relating to appeals from any courts in Aden to any courts which will, after the appointed day, be in either of the new Dominions, shall continue in force in their application both to Aden and to the Dominion in question, and the last-mentioned courts shall exercise their jurisdiction accordingly.¹

* * * *

18. Provisions as to existing laws, etc.

(1) In so far as any Act of Parliament, Order in Council, order, rule, regulation or other instrument passed or made before the appointed day operates otherwise than as part of the law of British India or the new Dominions, references therein to India or British India, however worded and whether by name or not, shall, in so far as the context permits and except so far as Parliament may hereafter otherwise provide, be construed as, or as including, references to the new Dominions, taken together, or taken separately, according as the circumstances and subject matter may require:

Conditions
under which
existing
laws will
continue
in
operation

Provided that nothing in this sub-section shall be construed as continuing in operation any provision in so far as the continuance thereof as adapted by this sub-section is inconsistent with any of the provisions of this Act other than this section.

¹ The next Section (Section 17) deals with Divorce Jurisdiction.

(2) Subject to the provisions of sub-section (1) of this section and to any other express provision of this Act, the Orders-in-Council made under sub-section (5) of section 311 of the Government of India Act, 1935, for adapting and modifying Acts of Parliament shall, except so far as Parliament may hereafter otherwise provide, continue in force in relation to all Acts in so far as they operate otherwise than as part of the law of British India or the new Dominions.

(3) Save as otherwise expressly provided in this Act, the law of British India and of the several parts thereof existing immediately before the appointed day, shall, so far as applicable and with the necessary adaptations, continue as the law of each of the new Dominions and the several parts thereof until other provision is made by laws of the Legislature of the Dominion in question or by any other Legislature or other authority having power in that behalf.

(4) It is hereby declared that the Instruments of Instructions issued before the passing of this Act by His Majesty to the Governor-General and the Governors of Provinces lapse as from the appointed day, and nothing in this Act shall be construed as continuing in force any provision of the Government of India Act, 1935, relating to such Instruments of Instructions.

Instruments
of Instruc-
tions lapse.

(5) As from the appointed day, so much of any enactment as requires the approval of His Majesty in Council to any rules of court shall not apply to any court in either of the new Dominions.

19. *Interpretation, etc.*

(1) References in this Act to the Governor-General shall, in relation to any order to be made or other act done on or after the appointed day, be

construed (a) where the order or other act concerns one only of the new Dominions, as references to the Governor-General of that Dominion; (b) where the order or other act concerns both of the new Dominions and the same person is the Governor-General of both those Dominions, as references to that person; and (c) in any other case, as references to the Governors-General of the new Dominions, acting jointly.

(2) References in this Act to the Governor-General shall, in relation to any order to be made or other act done before the appointed day, be construed as references to the Governor-General of India within the meaning of the Government of India Act, 1935, and so much of that or any other Act as requires references to the Governor-General to be construed as references to the Governor-General-in-Council shall not apply to references to the Governor-General in this Act.

Meaning of
"Governor-
General"

(3) References in this Act to the Constituent Assembly of a Dominion shall be construed as references (a) in relation to India, to the Constituent Assembly, the first sitting whereof was held on the 9th day of December, 1946, modified (i) by the exclusion of the members representing Bengal, the Punjab, Sind and British Baluchistan; and (ii) should it appear that the North-West Frontier Province will form part of Pakistan, by the exclusion of the members representing that Province; and (iii) by the inclusion of members representing West Bengal and East Punjab; and (iv) should it appear that, on the appointed day, a part of the Province of Assam is to form part of the new Province of East Bengal, by the exclusion of the members theretofore representing the Province of Assam and the inclusion of members chosen to represent the remainder of that province; (b) in relation to

Meaning of
"Constituent
Assembly"

Pakistan, to the Assembly set up or about to be set up at the date of the passing of this Act under the authority of the Governor-General as the Constituent Assembly for Pakistan :

Provided that nothing in this sub-section shall be construed as affecting the extent to which representatives of the Indian States take part in either of the said Assemblies, or as preventing the filling of casual vacancies in the said assemblies, or as preventing the participation in either of the said Assemblies in accordance with such arrangements as may be made in that behalf, of representatives of the tribal areas on the borders of the Dominion for which that Assembly sits, and the powers of the said Assemblies shall extend, and be deemed always to have extended, to the making of provisions for the matters specified in this proviso.

(4) In this Act, except so far as the context otherwise requires—references to the Government of India Act, 1935, include references to any enactments amending or supplementing that Act, and, in particular, references to the India (Central Government and Legislature) Act, 1946 ; “India”, where the reference is to a state of affairs existing before the appointed day, or which would have existed but for the passing of this Act, has the meaning assigned to it by section 311 of the Government of India Act, 1935 ; “Indian forces” includes all His Majesty’s Indian forces existing before the appointed day and also any forces of either of the new Dominions ; “pension” means, in relation to any person, a pension, whether contributory or not, of any kind whatsoever payable to or in respect of that person, and includes retired pay so payable, a gratuity so payable and any sum or sums so payable by way of the return, with or without interest thereon or other additions thereto, of subscriptions to a provident fund ; “province” means a Governor’s province ;

Meaning
of various
terms

“remuneration” includes leave pay, allowances and the cost of any privileges or facilities provided in kind.

(5) Any power conferred by this Act to make any order includes power to revoke or vary any order previously made in the exercise of that power.

20. Short Title.

This Act may be cited as the Indian Independence Act, 1947.

First Schedule (Section 3)

Bengal districts provisionally included in the new Province of East Bengal. In the Chittagong Division, the districts of Chittagong, Noakhali and Tippera. In the Dacca Division, the districts of Bakarganj, Dacca, Faridpur and Mymensingh. In the Presidency Division, the districts of Jessore, Murshidabad and Nadia. In the Rajshahi division, the districts of Bogra, Dinajpur, Malda, Pabna, Rajshahi and Rangpur.

Second Schedule (Section 4)

Districts provisionally included in the new Province of West Punjab. In the Lahore Division, the districts of Gujranwala, Gurdaspur, Lahore, Sheikhupura and Sialkot. In the Rawalpindi Division,, the districts of Attock, Gujrat, Jhelum, Mianwali, Rawalpindi and Shahpur. In the Multan Division, the districts of Dera Ghazi Khan, Jhang, Lyallpur, Montgomery, Multan and Muzaffargarh.

Third Schedule (Section 12)

Modifications of Army Act and Air Force Act in relation to British forces.¹

¹ Details omitted.

APPENDIX A

Documents on Indian States

45. MAHATMA GANDHI ON THE
INDIAN PRINCES¹.

I. Article written in 1939.

Princes are
"an imperial
creation."

Do not Princes stand much on the same footing as the Europeans? Many, if not most, of them are an imperial creation and sustained for imperial interests. The Princes in no way represent their people. Does not this British protectorate mean naked imperialism? The Congress is invited to regard the Princes as a minority. British power is the overlord without whom the Princes cannot breathe. They are not free even to see Congressmen, much less to enter into any settlement with them.

Princes
"represent"
nobody but
themselves."

. They (*i.e.*, the Princes) owe their existence to the Paramount Power and have no status independent of it they can do nothing good or big without the consent, tacit or implied, of the Paramount Power. They represent nobody but themselves. To invite the Congress to settle with the Princes is the same as inviting it to settle with the Paramount Power.

II. 'Harijan', December 16, 1939.

Whatever may be said to the contrary I must continue to claim to be a friend and well-wisher of the Princes. For, my picture of free India has a definite place for them². And hence it is that I have been drawing attention to the weakness of their position as it exists to-day the Princes cannot hold out against

¹ See M. K. Gandhi. *The Indian States Problem*.

² "I would give them (*i.e.*, the Princes) a fat commission as trustees of their people, ... they must work for this commission. They would have the same privileges as the British King enjoys". (*Harijan*, January 13, 1940).

millions who have become conscious of their power, whether spiritual or physical

. The very word 'Paramountcy' involves the final authority of the Paramount Power. The so-called treaties are not treaties between equals, but conditions and restrictions imposed upon those to whom they are given. They are so many grants made principally or wholly for the consolidation of Paramountcy. Lawyers would no doubt be found who would argue that treaties are solemn pledges which can be enforced by the Princes. How can a dwarf enforce right against a giant?

Meaning of
"Paramountcy"

I hold that, in the nature of things, it is impossible for the Congress to negotiate with the Princes directly. When the time has come, it will be found that the Paramount Power will have negotiated on their behalf with the Congress or whoever can deliver the goods. Princes must not be used or allowed to impede the march of India to freedom, even as the I.C.S., a British creation, must not be allowed to do so. Both are bulwarks of the Empire, and both will either be found to yield willing assistance to free India or will be disbanded.

Princes
not to be
used to
"impede
march of
India to
freedom."

46. INDIAN NATIONAL CONGRESS ON INDIAN STATES, 1936-1939.

1. Resolution, Lucknow Session, 1936.

The Congress desires to make it clear that, in its opinion, the people of the States should have the same rights of self-determination as those of the rest of India, and that the Congress stands for the same political, civil and democratic liberties for every part of India. The Congress, however, desires to point out that the struggle for liberty within the States has, in the very nature of things, to be carried on by the people of the States themselves.

States'
people
should
have the
same rights
as people
of British
India.

II. Resolution, Haripura Session, 1938.

Congress
wants
democratic
freedom
for States.

States
should join
Indian
Federation
as 'free
units'

The Congress stands for the same political, social and economic freedom in the States as in the rest of India and considers the States as integral parts of India which cannot be separated. The *Purna Swaraj* or complete independence, which is the objective of the Congress, is for the whole of India inclusive of the States, for the integrity and unity of India must be maintained in freedom as it has been maintained in subjection. The only kind of Federation that can be acceptable to the Congress is one in which the States participate as free units, enjoying the same measure of democratic freedom as the rest of India. The Congress, therefore, stands for full responsible government and the guarantee of civil liberty in the States, and deplors the present backward conditions and utter lack of freedom and suppression of civil liberties in many of these States.

Why
Congress
cannot
work within
States

The Congress considers it its right and privilege to work for the attainment of this objective in the States. But, under existing circumstances, the Congress is not in a position to work effectively to this end within the States, and numerous limitations and restrictions imposed by the Rulers or by British authority working through them, hamper its activities. The hope and assurance which its name and great prestige raise in the minds of the people of the States find no immediate fulfilment, and disillusion results. It is not in consonance with the dignity of the Congress to have local committees which cannot function effectively, or to tolerate indignity to the National Flag. The inability of the Congress to give protection or effective help, when hopes have been raised, produces helplessness in the people of the States and hinders the development of their movement for freedom.

In view of the different conditions prevailing in the States and the rest of India, the general policy of the Congress is often unsuited to the States and may result in preventing or hampering the natural growth

of a freedom movement in a State. Such movements are likely to develop more rapidly and to have a broader basis, if they draw their strength from the people of the State, produce self-reliance in them, and are in tune with the conditions prevailing there, and do not rely on extraneous help and assistance or on the prestige of the Congress name. The Congress welcomes such movements, but in the nature of things and under present conditions, the burden of carrying on the struggle for freedom must fall on the people of the States. The Congress will always extend its goodwill and support to such struggles carried on in a peaceful and legitimate manner, but that organizational help will inevitably be, under existing conditions, moral support and sympathy. Individual Congressmen, however, will be free to render further assistance in their personal capacities. In this way the struggle can develop without committing the Congress organization, and thus unhindered by external considerations.

Struggle for freedom in States should be fought by the people of the States with the moral support of the Congress.

The Congress therefore directs that, for the present, Congress Committees in the States shall function under the direction and control of the Congress Working Committee and shall not engage in the name and under the auspices of the Congress. Internal struggles of the people of the States must not be undertaken in the name of the Congress. For this purpose independent organizations should be started and continued where they exist already within the States.

No movement in States to be launched in the name of the Congress

The Congress desires to assure the people of the States of its solidarity with them and of its active and vigilant interest in and sympathy with their movement for freedom. It trusts that the day of their deliverance is not far distant.

III. Resolution of Working Committee, December, 1938.

The Working Committee welcome the awakening of the people of the Indian States in many parts of the

Awakening
of the
people of
States

country and consider this as a hopeful prelude to the larger freedom, comprising the whole of India, for which the Congress has laboured. The Committee support the demand for civil liberty and responsible government under the aegis of the Rulers in the States and express their solidarity with these movements for freedom and self-expression.

Explanation
and justi-
fication of
Haripura
resolution

The Committee desire to draw attention afresh to the resolution of the Haripura Congress which defines Congress policy in regard to the States. While it is the right and privilege of the Congress to work for the attainment of civil liberty and responsible government in the States, existing circumstances impose certain limitations on this work, and considerations of prudence prevent the Congress from interfering organisationally and directly in the internal struggles of the States. This policy was conceived in the best interests of the people, to enable them to develop self-reliance and strength. It was also intended as a measure of the goodwill of the Congress towards the States and of its hope that the Rulers, of their own accord, would recognise the spirit of the times and satisfy the just aspirations of their people. But this was never conceived as an obligation. The Congress has always reserved the right, as it is its duty, to guide the people of the States and lend them its influence. With the great awakening that is taking place among the people of the States, there must be an increasing identification of the Congress with the States' people.

"Increasing
identifica-
tion of
Congress
with States'
people"

The policy laid down by the Haripura Congress, which has been so abundantly justified, must continue to be pursued.

IV. Resolution, Tripuri Session, 1939.

The Congress is of opinion that the resolution of the Haripura session of the Congress relating to the States has answered the expectations raised by it and has justified itself by encouraging the people of the States to organize themselves and conduct their own

Justification
of Haripura
resolution

movements for freedom. The Haripura policy was conceived in the best interests of the people in order to enable them to develop self-reliance and strength. This policy was dictated by circumstances and by a recognition of the limitations inherent in the circumstances, but it was never conceived as an obligation. The Congress has always possessed the right, as it is its duty, to guide the people of the States and lend them its influence. The great awakening that is taking place among the people of the States may lead to a relaxation or to the complete removal of the restraint which the Congress imposed upon itself, thus resulting in an ever-increasing identification of the Congress with the State people.

The Congress desires to reiterate that its objective, Complete Independence, is for the whole of India, inclusive of the States, which are integral parts of India, which cannot be separated, and which must have the same measures of political, social and economic freedom as the rest of India.

Congress objective—
Complete Independence—is for the whole of India, including States.

47. LORD LINLITHGOW ON INDIAN STATES,

1937-1939.

I. Speech¹, February 14, 1937.

My distinguished predecessor Lord Willingdon informed your Highness in 1935 of the advance that had up to that time been made in the policy of bringing all the Indian States into direct relations with the Government of India. That process has recently been completed. . . the change is one that is demanded alike by logic and the force of circumstances, altered as they are by the advent of new constitutional conditions in India.

All States brought into direct relations with Government of India

II. Speech², December 19, 1938.

. . . . The States are as essential an element in a Federation of India as are the Provinces of British

¹ At the Chamber of Princes.

² At the Associated Chambers of Commerce, Calcutta.

Federal
ideal
originated
with
Princes

Princes free
to decide
about
joining
Federation

India. The unity of India is as dear a thing to them as it is to British India. It was with distinguished leaders of the States that the Federal ideal in its present form originated ; and their contribution to the elaboration of the Federal ideal has in the past been material. The decision as to their further contribution must be for them and for them alone to make. No pressure to take a decision in a particular sense will be brought upon the Rulers of the Indian States by His Majesty's Government or by me. Indeed, this matter has throughout been approached in full appreciation of the responsibility which falls upon the individual Ruler who has to take a decision of such momentous consequence to his dynasty and his State.

III. Speech¹, March 1, 1939.

Provision
should be
made for
'ventilation
of legiti-
mate
grievances'

It is in these days. of vital importance not only that administration should be conducted on sound and up-to-date lines, but that adequate provision should exist for the ventilation of legitimate grievances and for bringing to the notice of the Government of the State the wants and the suggestions of its subjects.

IV. Speech², March 4, 1939.

Constitu-
tional deve-
lopment
in States
should be
left to the
discretion
of the
Rulers.

..... I have no doubt.....Your Highness..... will continue to ensure that your people are given all due opportunities of bringing their wants and their troubles to the notice of your Government... .. as has been made clear by the pronouncements recently made in Parliament on behalf of His Majesty's Government and by myself on various public occasions, the adoption or development of the particular form of constitution best suited to the needs of his people and his State is a matter primarily and essentially for the Ruler himself, and one the decision in regard to which must be left to his own wisdom and his own foresight.

¹ At Jodhpur.

² At Udaipur.

V. Speech¹, March 13, 1939.

.....it is more than ever essential in present conditions that the authorities of the Indian States should without exception make it their constant care to watch for and to remedy any legitimate grievances that may exist in the administrative field it is, equally, as clearly in the interests of all Rulers as it is their plain and manifest duty, to ensure by their own close personal interest in the affairs of their States, in the work of their officials, and in the daily life of their subjects, that those subjects have cause for content, that they are not allowed to suffer undue exactions either on behalf of the State itself or at the call of unworthy officials, and that all genuine grievances receive prompt and active consideration. It goes without saying that an effective machinery by which the authorities of the States can satisfy themselves that all such complaints can readily reach the ears of the Durbar is an essential necessity in present conditions; and it is equally essential that the peoples of the States should feel assured that their wants, their difficulties, and their representations will receive the fullest attention and the fullest sympathy.

Plea for
benevolent
administra-
tion

* * * *

. the decision as to the constitution best suited to the needs of his people and his State rests with the Ruler himself to take, and. . . no pressure will be brought to bear on him in this respect by the Paramount Power². Nor will any obstruction be placed in his way by the Paramount Power should he wish to give effect to constitutional advances consistent with his Treaty obligations.

Attitude of
Paramount
Power to
reforms in
States

* * * *

¹ At the Chamber of Princes.

² "With regard to administrative as distinct from constitutional reform pressure was directly exerted on the Princes".—Coupland, *The Constitutional Problem in India*, Part II, p 169.

Small States
should
combine
in the
matter of
admini-
strative
services"

In no case is the need for co-operation and combination more patent, more pronounced, and more immediate than in the case of the smaller States. These States whose resources are so limited as virtually to preclude them individually from providing for the requirements of their people in accordance with modern standards have indeed no other practical alternative before them. I would take this opportunity to impress upon the Rulers of such States, with all the emphasis at my command, the wisdom of taking the earliest possible steps to combine with their neighbours in the matter of administrative services so far as this is practicable

VI. Speech¹, August 21, 1939.

Princes free
to decide
whether
they will
join Federa-
tion or not

Let me . . . say how fully conscious I am of the onerous nature of the decision (on the question of joining the proposed Federation) which it falls to the Princes to take at the present juncture. The choice is the free choice of each individual Ruler, and it is for him, and for him alone, to make up his own mind as to what decision he wishes to take I have frankly been surprised to learn that the suggestion has been made in some quarters that my officers have been endeavouring to bring pressure to bear on Their Excellencies as to the course which they should adopt. So far as I know there is no foundation whatever for that allegation . . .

* * * *

Federal
scheme not
opposed to
"Imperial
interests"

There is . . . one point which I ought in fairness to mention That is the suggestion that a Prince who rejects out of hand the federal offer will be exhibiting by his action his loyalty to the Crown. Nothing could be a more fantastic or a more improper suggestion The suggestion has equally been made to me that "Imperial inter-

¹ Address to the Standing Committee of the Chamber of Princes.

ests" were likely to suffer injury from the Federal scheme. Your Highnesses need no assurance from me that His Majesty's Government have all relevant considerations of that order before them to-day, as indeed they, and Parliament, had in approving this scheme.

48. MEMORANDUM ON STATES' TREATIES AND PARAMOUNTCY, May 12, 1946.

[This Memorandum was presented by the Cabinet Mission to the Chancellor of the Chamber of Princes. It was drawn up before the Mission began its discussions with party leaders and represented the substance of what they communicated to the representatives of the States at their first interviews with the Mission. This is the explanation of the use of the words 'succession Government or Governments of British India,' an expression which would not of course have been used after the issue of the Delegation's statement of May 16.]

Prior to the recent statement of the British Prime Minister in the House of Commons an assurance was given to the Princes that there was no intention on the part of the Crown to initiate any change in their relationship with the Crown or the rights guaranteed by their treaties and engagements without their consent. It was at the same time stated that the Princes' consent to any changes which might emerge as a result of negotiations would not unreasonably be withheld.

Princes' consent essential to changes in their relationship with Crown

The Chamber of Princes has since confirmed that the Indian States fully share the general desire in the country for the immediate attainment by India of her full stature.

His Majesty's Government have now declared that if the Succession Government or Governments in British India desire independence, no obstacle would be placed in their way. The effect of these announcements is that all those concerned with the future of India wish her to attain a position of independence within or without the British Commonwealth. The Dele-

gation have come here to assist in resolving the difficulties which stand in the way of India fulfilling this wish.

Paramountcy will not be transferred to Indian Government.

During the interim period, which must elapse before the coming into operation of a new constitutional structure under which British India will be independent or fully self-governing, paramountcy will remain in operation. But the British Government could not and will not in any circumstances transfer paramountcy to an Indian Government.

States were expected to improve their administration and introduce representative institutions

In the meanwhile, the Indian States are in a position to play an important part in the formulation of the new constitutional structure for India, and H. M. G. have been informed by the Indian States that they desire in their own interests and in the interests of India as a whole, both to make their contribution to the framing of the structure, and to take their due place in it when it is completed. In order to facilitate this they will doubtless strengthen their position by doing everything possible to ensure that their administrations conform to the highest standard. Where adequate standards cannot be achieved within the existing resources of the State they will no doubt arrange in suitable cases to form or join administrative units large enough to enable them to be fitted into the constitutional structure.

It will also strengthen the position of States during this formulative period if the various Governments which have not already done so take active steps to place themselves in close and constant touch with public opinion in their States by means of representative institutions.

Interim understanding between Princes and British India on matters of common concern

During the interim period it will be necessary for the States to conduct negotiations with British India in regard to the future regulation of matters of common concern, especially in the economic and financial field. Such negotiations, which will be necessary whether the States desire to participate in the new Indian constitutional structure or not, will occupy a considerable period of time, and since some of these negotiations may well be incomplete

when the new structure comes into being, it will, in order to avoid administrative difficulties, be necessary to arrive at an understanding between the States and those likely to control the succession Government or Governments that for a period of time the then existing arrangements as to these matters of common concern should continue until the new agreements are completed. In this matter, the British Government and the Crown Representative will lend such assistance as they can, should it be so desired.

When a new fully self-governing or independent Government or Governments come into being in British India, H. M. G.'s influence with these Governments will not be such as to enable them to carry out the obligations of paramountcy.

Moreover, they cannot contemplate that British troops would be retained in India for this purpose. Thus, as a logical sequence and in view of the desires expressed to them on behalf of the Indian States, His Majesty's Government will cease to exercise the powers of paramountcy. This means that the rights of the States which flow from their relationship to the Crown will no longer exist and that all the rights surrendered by the States to the paramount power will return to the States. Political arrangements between the States on the one side and the British Crown and British India on the other will thus be brought to an end. The void will have to be filled either by the States entering into a federal relationship with the succession Government or Governments in British India, or failing this, entering into particular political arrangements with it or them.

Consequence
of with-
drawal of
British
Para-
mountcy

49. INDIAN STATES ON CONSTITUENT ASSEMBLY¹, 1947.

This meeting reiterates the willingness of the States to render the fullest possible co-operation in framing an agreed constitution for, and in the setting

States
prepared to
co-operate
in Constitu-
tion-making

¹ Resolutions of the Standing Committee of the Chamber of Princes, January 29, 1947.

up of, the proposed Union of India in accordance with the accepted plan; and declares :—

(4) That the following fundamental propositions, *inter alia* form the basis for the States' acceptance of the Cabinet Mission's plan:—

Conditions
of co-operation :

(I) Voluntary entry
into Union

(I) The entry of the States into the Union of India in accordance with the accepted plan shall be on no other basis than that of negotiation, and the final decision shall rest with each State. The proposed Union shall comprise, so far as the States are concerned, the territories of only such States or groups of States as may decide to join the Union, it being understood that their participation in the constitutional discussions in the mean time will imply no commitments in regard to their ultimate decision which can only be taken after consideration of the complete picture of the constitution.

(2) Distribution of
subjects and
powers

(II) The States will retain all subjects and powers other than those ceded by them to the Union. Paramountcy will terminate at the close of the interim period and will not be transferred to or inherited by the new Government of India. All the rights surrendered by the States to the Paramount Power will return to the States. The proposed Union of India will, therefore, exercise only such functions in relation to the States in regard to Union subjects as are assigned or delegated by them to the Union. Every State shall continue to retain its sovereignty and all rights and powers except those that have been expressly delegated by it. There can be no question of any powers being vested or inherent or implied in the Union in respect of the States unless specifically agreed to by them.

(3) Guarantee of
internal
constitution
and
territorial
integrity

(III) The constitution of each State, its territorial integrity, and the succession of its reigning dynasty in accordance with the custom, law and usage of the State, shall not be interfered with by the Union or any Unit thereof, nor shall the existing

boundaries of a State be altered except by its free consent and approval.

(IV) So far as the States are concerned, the Constituent Assembly is authorised only to settle the Union constitution in accordance with the Cabinet Mission's plan, and is not authorised to deal with questions bearing on the internal administrations or constitutions of individual States or groups of States.

(4) Limited
functions of
Constituent
Assembly

(V) His Majesty's Government have made it clear in Parliament that it is for the States to decide freely to come in or not as they choose. Moreover, according to the Cabinet Mission's Memorandum of May 12, 1946, on States' treaties and paramountcy, "Political arrangements between the States on the one side and the British Crown and British India on the other will be brought to an end" after the interim period. "The void will have to be filled either by the States entering into a Federal relationship with the successor Government in British India, or failing this, entering into particular political arrangements with it."

(B) That the States Negotiating Committee, elected by the Standing Committee of the Chamber of Princes and set up at the request of His Excellency the Viceroy in accordance with Paragraph 21 of the Cabinet Mission's statement of May 16, 1946,⁹ is the only authoritative body competent under the Cabinet Mission's plan to conduct preliminary negotiations on behalf of the States, on such questions relating to their position in the new Indian constitutional structure as the States might entrust to it.

* * * *

(C) That while the distribution *inter se* of the States' quota of seats on the Constituent Assembly is a matter for the States to consider and decide among themselves, the method of selection of the States' representatives is a matter for consultation between the States Negotiating Committee and the correspon-

(5) Selection
of States'
represent-
atives

ding Committee of the British Indian portion of the Constituent Assembly before final decision is taken by the States concerned.

* * * *

Scope of
States
Negotiating
Committee

The meeting resolves that in accordance with this resolution and the instructions and resolutions of the States Constitutional Advisory Committee as endorsed by the Standing Committee of Princes and the Committee of Ministers, the States' Negotiating Committee be authorised to confer with the corresponding committee of the British Indian portion of the Constituent Assembly, as contemplated and declared by His Majesty's Government in Parliament, in order to negotiate (A) the terms of the States' participation in the Constituent Assembly when it re-assembles under Paragraph 19 (6) of the Cabinet Mission's statement, and (B) in regard to their ultimate position in the All-India Union, provided that the results of these negotiations will be subject to the approval of the aforesaid States Committee and ratification by the States.

50. THE ALL-INDIA CONGRESS COMMITTEE ON THE INDIAN STATES, JUNE 15, 1947.

The A.-I.C.C. welcomes the association of many Indian States in the work of the Constituent Assembly. The Committee hopes that the remaining States will also co-operate in this building up of the constitutional structure of Free India in which the State units will be equal and autonomous sharers with the other units of the Federation.

* * * *

Limited
progress in
States
towards re-
presentative
institutions

While recognising that some progress has been made in some States towards representative institutions, the A.-I.C.C. regrets that during this past critical year, since the Memorandum of the Cabinet Mission, this progress has been very limited both in its extent and quality. In view of the basic

changes that are going to take place in India within the next two months, resulting from the complete transfer of power to Indian hands, it is of vital importance that progress leading to responsible government should take place rapidly in the States. The A.-I.C.C. trusts that all the States will initiate these changes so as to keep in line with the fast-changing situation in India and at the same time produce contentment and self-reliance in their people.

The arrangements made under paramountcy in the past dealt, *inter alia*, with the security of India as a whole. In the interest of that security, various arrangements were agreed to, limiting the power of the States' authorities and at the same time granting them protection. The question of the security of India as well as other matters are as important to-day as at any time previously and cannot be ignored in deciding the future of the States.

Congress
view on
Para-
mountcy

The A.-I.C.C. cannot admit the right of any State in India to declare its independence and to live in isolation from the rest of India. That would be a denial of the course of Indian history and of the objectives of the Indian people to-day.

The A.-I.C.C. trusts that the Rulers of the States will appreciate fully the situation as it exists to-day and will in full co-operation with their people enter as democratic units in the Indian Union, thereby serving the cause of their own people as well as of India as a whole.

The Committee does not agree with the theory of paramountcy as enunciated and interpreted by the British Government; but even if that is accepted the consequences that follow from the lapse of that paramountcy are limited in extent. The privileges and obligations as well as the subsisting rights as between the States and the Government of India cannot be adversely affected by the lapse of paramountcy. These rights and obligations have to be considered separately

Lapse of
Para-
mountcy
"does not
lead to the
independ-
ence of the
States".

and renewed or changed by mutual agreement. The relationship between the Government of India and the States would not be exhausted by the lapse of paramountcy. The lapse does not lead to the independence of the States. Both from the point of view of the spirit underlying the Memorandum of 12th May and the statement of 16th May, 1946, as well as the acknowledged rights of the people all over the world to-day it is clear that the people of the States must have a dominating voice in any decisions regarding them. Sovereignty, it is admitted, resides with the people, and if paramountcy lapses resulting in the ending of the relationship of the States to the Crown, the inherent rights of the people are not affected thereby for the worse.

51. PANDIT NEHRU ON PARAMOUNTCY, JUNE 15, 1947.

If the paramountcy of the British Crown is withdrawn, as they say it is going to be withdrawn, what follows? So far as we are concerned, we do not agree with the doctrine of paramountcy as it has been declared, especially during the last dozen years, by the British Government. You will remember that this business of a Crown Representative came into existence only a dozen years ago. Paramountcy has been exercised ever since the British became a leading power in India, first by the East India Company and then later by the Government of India that succeeded it. No doubt the Crown was behind it. There was no division in the Government of India, as between that part which dealt with the Indian States and that part which dealt with the rest. The whole of the Government of India dealt with the Indian States. The distinction came in only a dozen years ago with the Act of 1935.

History of
Para-
mountcy

¹ Speech at the All-India Congress Committee, New Delhi.

When there was some talk of a Federation in India, the Butler Committee and others began to talk of paramountcy vesting in the Crown, so that it was a new thing. We did not agree with that but I am not going into that question now.

As paramountcy vests in the British Crown, the British Crown ceases to exercise it; it lapses, or if you like it returns to the States. But there is a certain inherent paramountcy in the Government of India which cannot lapse—an inherent paramountcy in the dominant state in India which must remain because of the very reasons of geography, history, defence, etc., which gave rise to it when the British became the dominant power in India. If anybody thinks that it lapses, then those very reasons will give rise to it again.

“Inherent
Para-
mountcy”
in the
“dominant
State in
India”

It must exist, or the only alternative to it is that the various States in India should in groups, or otherwise, join the Federation or the Indian Union. Then, of course, there is no paramountcy, because presumably they join as autonomous and equal units in that Union and they share equally in the Union Legislature and the Union Executive. Presuming, of course, that those units are proper units, economic units, big enough units of the Federation, they have the same position in the Federation as any other unit like a province. Probably in the independent Indian Union there will be no distinction between a province as such and an Indian State as such, but all will be States of the Union or whatever name may be given to them, so that over all those who are equal members of the Union no question of paramountcy arises.

For those who do not join, the question of paramountcy inevitably arises, because they cannot live in a void. In the declaration of May 16 it was clearly laid down that the Indian Union would consist of the provinces and the States. It was not envisaged that any State could remain outside the Union, though it is true that a State was given a certain power, if you like,

No State
can become
independent
or maintain
special
relation
with a
foreign
Power.

a certain freedom, to decide how to come in. But it was not envisaged that it could keep out ultimately. In the Memorandum of May 12 it was stated clearly that the States should either join the Indian Union—that was the primary thing, or, if they did not do so, they must come to some other arrangement with the Union. There is no third way out of the situation, third way meaning independence or special relation with a foreign Power.

If a State do not join the Union, there will have to be some relationship with the Union and its relationship will be not one of equality but slightly lower. The relationship between the two will be that of a certain suzerain power exercising a certain measure of paramountcy but within the limitations of paramountcy and suzerainty.

* * * *

These arrangements cannot possibly admit of the right of a State to any contact with any foreign State or in regard to the right of any independent authority to do what it would. All that is not because we wish to interfere with the States—of course we wish the people of the States well—but for another fundamental reason, that these matters affect the security of India. And we cannot permit anything to happen in India in any State which affects fundamentally the security of India, either in relation to defence arrangements or in relation to contact with foreign Powers. Therefore I want this not only to be realised by the States but I want other countries and powers to realise and appreciate the situation.

Security of
India

. . . I should like to say and other countries to know that we will not recognise any independence of any State in India; further, that any recognition of any such independence by any foreign Power, whichever it may be and wherever it may be, will be considered an unfriendly act..

The considerations of security and other interests which the Indian Union must have in every State in India cannot be overridden by any unilateral declara-

tion of a State, and therefore, any foreign Power which takes an action on the basis of that unilateral declaration will be ignoring our special interests and doing an unfriendly act to us.

52. AMBEDKAR'S STATEMENT ON INDIAN STATES, JUNE 17, 1947.

The announcement by Travancore and Hyderabad that they will declare themselves independent sovereign States on 15th August, 1947, when India becomes a Dominion, and the inclination shown by other States to follow their example has created a new problem which may turn out to be worse than the Hindu-Muslim problem as it is sure to result in the further Balkanization of India . . . There are obviously two aspects to the question. Can the States declare themselves independent? Should they declare themselves independent? For the sake of avoiding confusion it is better to deal with the two aspects of the question separately.

To begin with the first. The basis of the claim made by the States for a right to declare themselves independent lies in the Statement of 12th May, 1946, issued by the Cabinet Mission in which they say that the British Government could not and will not in any circumstances transfer paramountcy to an Indian Government, which means that the rights of the States which follow from their relationship to the Crown will no longer exist and that all the rights surrendered by the States to the Paramount Power will return to the States. The statement of the Cabinet Mission that the Crown could not transfer paramountcy is obviously not a statement of political policy. It is a statement of law. The question is : is this a correct statement of law as it applies to the States ?

Can States declare themselves independent?

There is nothing original in the proposition set out by the Cabinet Mission. It is a mere repetition of the view propounded by the Butler Committee appointed in

Butler Committee :

1929 to examine the relationship between the Crown and the Indian States.

As students of the subject know, the Princes in the stand they took before the Butler Committee contended for two propositions :

(1) Contention of Princes

(1) That paramountcy could not override the terms and conditions contained in the treaties between the Princes and the States but was limited by them.

(2) That the relations embodied in paramountcy were of a personal nature between the Crown and the Princes and could not, therefore, be transferred by the Crown to an Indian Government without the consent of the Princes.

(2) Conclusion of the Committee

The Butler Committee without much ceremony repudiated the first of these two contentions. It put the matter in most ruthless language by declaring that paramountcy was paramount and was not limited by any terms contained in the treaties. As regards the second contention, strangely enough it was upheld by the Butler Committee. Whether the Butler Committee did it in order to appease the Princes who were annoyed with the Committee for turning down their contention regarding paramountcy it is no use speculating. The fact however remains that it gave immense satisfaction to the Political Department of the Government of India and to the Princes.

Criticism of the doctrine that Paramountcy cannot be transferred to an Indian Government

The doctrine that paramountcy cannot be transferred to an Indian Government is a most mischievous doctrine and is based upon an utter misunderstanding of the issues involved. The doctrine is so unnatural that the late Prof. Holdsworth, author of *History of English Law*, had to exercise a great deal of ingenuity in defending it in the pages of *Law Quarterly Review* for October, 1930. . . .

The case against the position taken by the Cabinet Mission in regard to paramountcy can be stated in the following propositions:

(1) Much of the mystery which surrounds para-

paramountcy is due to the fact that most people do not understand what it stands for. Paramountcy is merely another name for what is called the prerogative of the Crown. It is true that paramountcy as a prerogative of the Crown differs from the ordinary prerogative of the Crown in two respects.

Paramountcy means the prerogative of the Crown.

(a) The basis of the ordinary prerogative of the Crown lies in common law as distinguished from statute law, while the basis of the prerogative arising from paramountcy lies in treaties supplemented by usage.

(b) The common law prerogative of the Crown extends to all the subjects of the Crown resident in the King's dominions, and over aliens temporarily resident therein, while paramountcy as a prerogative extends only over the Indian States. Paramountcy is no doubt a distinct part of the prerogative of the Crown. Notwithstanding these differences the fact remains that paramountcy is a prerogative of the Crown.

(2) Paramountcy being the prerogative of the King, the exercise of paramountcy is, contrary to the general opinion, not subject to the rules of International Law but is subject to that part of the municipal law of the British Empire which is called the law of the constitution.

Prerogative in the form of Paramountcy can be exercised by the King only in accordance with advice given by Ministers of the Dominion concerned.

(3) According to the principle of the constitutional law of the British Empire, while the prerogative vests in the King, the King has no discretion in the exercise of his prerogative. The King cannot exercise it independently of the advice of his Ministers. He can exercise it only in accordance with the advice given to him by the Ministers.

The last proposition enunciated above requires further elaboration. For it may be asked, on the advice of which Ministry is the Crown to act? The answer is, on the advice of the Ministry of the Dominion concerned. Before the Statute of Westminster the British Empire constituted one single dominion. Consequently in the matter of the exercise of its prerogative rights the Crown acted on the advice of the British Cabinet. After

the passing of the Statute of Westminster which carved out Canada, Australia, South Africa and Ireland as separate Dominions, the Crown in the exercise of its prerogative rights acts on the advice of the Cabinet of the Dominion concerned. It is bound to do so. It cannot do otherwise. It follows when India becomes a Dominion the Crown will be bound to act in the exercise of its prerogative rights, *i.e.*, paramountcy in the advice of the Indian Cabinet.

Can the
Cabinet of
India (as a
Dominion)
advise the
Crown in
regard to
exercise
of Para-
mountcy?

The protagonists of the theory that paramountcy cannot be transferred to the Government of India rely on the omission from the Government of India Act, 1935, of the provisions of Section 39 of the Government of India Act, 1833 (they were reproduced in Section 33 of the Government of India Act, 1915-19) according to which the civil and military government of India (as distinguished from the civil and military government of British India) is vested in the Governor-General-in-Council and argue that the omission is evidence in support of the conclusion that paramountcy could not be transferred to an Indian Government. To say the least, the argument is puerile. The existence or non-existence of such a provision in the Government of India Act is quite beside the point and proves nothing. The non-existence of the clause does not prove that India can under no circumstances claim the right to advise the Crown in regard to the exercise of paramountcy. Its existence in the Government of India Act does not mean that such a power was vested in it during 1833 to 1935 when it formed part of the Act. For that very clause contained the proviso whereby the Governor-General-in-Council was required to pay due obedience to all such orders as may be issued from the Secretary of State which means even during 1833 to 1935 the ultimate authority to advise the Crown in the matter of the exercise of the prerogative was the Secretary of State for India, *i.e.*, British Cabinet of which he is a member.

The different methods of disposing of paramountcy adopted in the various Acts passed by Parliament relat-

ing to the Government of India between 1833 and 1935 do not and cannot in any way affect the claim of the Indian people to advise the Crown in the exercise of paramountcy. Under the constitutional law of the Empire, it is only when a country has become a Dominion that it can claim the right to advise the Crown and the fact that before it became a Dominion the Crown was differently advised is no bar to its claim. Under the 1935 Act India was not granted responsible government. But even if India was granted responsible government India could not have claimed to advise the Crown in regard to the exercise of its prerogative rights regarding Indian States. This is because the constitutional law of the British Empire makes an important difference between responsible government and Dominion Status. In responsible government the right of the Cabinet to advise the Crown and the obligation of the Crown to accept it are confined to cases of the exercise of the prerogative arising out of the internal affairs of the country. As to external affairs, the British Cabinet retained the right to advise the Crown. But in the case of a Dominion, the Crown is bound to accept the advice of the Ministry with regard to all cases of the exercise of the prerogative, whether they relate to internal affairs or external affairs.

Position of
Dominions
in British
constitu-
tional law

That is why a Dominion can make a treaty with a foreign country without the intervention of the British Cabinet. The fact that the Government of India was not in the past permitted to advise the Crown in the exercise of its rights of paramountcy does not mean that there is any inherent constitutional incapacity which disentitles her from claiming the right to advise. The moment India gets the status of a Dominion it automatically acquires the capacity to advise the Crown on paramountcy.

. . . . On parity of reasoning India should get the right to advise the Crown in the exercise of its prero-

India as
Dominion
should have
same right
as other
Dominions.

Criticism of
Holdsworth

Can Para-
mountcy
lapse?

Crown can
surrender
prerogative
if permitted
by statute.

gative as did Canada, Australia, South Africa and Ireland when they became Dominions. That Prof. Holdsworth came to a different conclusion is due not to any difference in the fundamental propositions of the constitutional law stated above. Indeed, he accepts them in toto. The reason is that he posed quite a different question for argument. The question posed by Prof. Holdsworth was whether the Crown could cede or transfer paramountcy to an Indian Government. This is not the real issue. The real issue is whether the Indian Dominion can claim the right to advise the Crown in the exercise of paramountcy. In other words, we are not concerned with the question whether paramountcy could be transferred. The issue with which we are concerned is how paramountcy can be exercised. . . .

. . . . According to the Cabinet Mission, paramountcy will lapse. This is a most astounding statement and runs contrary to another well-established principle of constitutional law. According to this principle, the King cannot surrender or abandon his prerogative rights. If the Crown cannot transfer paramountcy the Crown cannot also abandon it. The validity of this principle was admitted by the Privy Council in *The Queen vs. Edulji Byramji* decided in 1840 and reported in 5 *Moore's Privy Council Cases*, p. 276, wherein they said (p. 294) that the Crown could not even by charter part with its prerogative. It is therefore obvious that the statement made by the Cabinet Mission that the Crown will not exercise paramountcy is contrary to the constitutional law by which the Empire is governed. The Crown must continue to exercise paramountcy. It is of course true that the Crown can surrender its prerogative if permitted to do so by express statutory authority. The question is whether it could be legal and proper for the British Parliament to make a law permitting the abandonment of paramountcy. It would be open, I am sure, for Indians to argue that such a step by the British Parliament would neither be proper nor legal. It would not be legal for the simple reason that after

India becomes a Dominion the statute abrogating paramountcy can be passed by the Dominion Parliament of India and the British Parliament would have no jurisdiction in the matter at all. Again, a statute passed by the Parliament of Great Britain abrogating paramountcy would be improper. The reason is obvious. The army is the ultimate sanction for paramountcy. This army has been the Indian Army for which British India has paid all along. Without the aid of this powerful army maintained by British India and placed at the disposal of the Crown through his agent the Viceroy and Governor-General of India, the Crown would never have been able to build up and conserve the powers of paramountcy. These powers are of the nature of a trust held by the Crown for the benefit of the people of India and it would be a gross abuse of power on the part of the British Parliament to pass a statute destroying that trust.

British Parliament cannot and should not pass statute abrogating Paramountcy.

A question may be asked : What happens when India becomes independent ? The Crown disappears and the question of advising the Crown does not remain. Can independent India claim to inherit the prerogative rights of the Crown ? For an answer to this question, one must look to the provisions of International Law relating to succession among states. Oppenheim admits that a succeeding state can inherit certain rights of the preceding state. From Hall's *International Law*, it would appear that among other things India may claim property and advantages which are secured to it by treaty with the princes. Independent India can, therefore, make a valid claim for the inheritance of paramountcy.

Can independent India inherit prerogative of British Crown ?

The conclusion is that the Indian States will continue to be in the same position when India becomes independent as they are now. They will be sovereign States to the extent they are but they cannot be independent States so long as they remain under the suzerainty—as they must be either of the Crown if India remains a Dominion or of the succession state if India becomes independent. While the suzerainty remains they can

Can States
become in-
dependent
when India
becomes in-
dependent?

never be independent. The States may declare themselves independent. But they must realize that while the suzerainty lasts it must continue even when India becomes independent—India will not recognize their independence nor can a foreign State accord them the status of an independent State.

The only way by which the Indian States can free themselves from paramountcy would be to bring about a merger of sovereignty or suzerainty. That can happen only when the States join the Indian Union as constituent units thereof. . . .

It would be wise on the part of the Indian States to follow that line and not to pursue the mirage of independence. The States should realise~~se~~ that their existence as sovereign independent States will not be worth five years' purchase. It is in the interest of princes themselves that they should join the Indian Union and become constitutional monarchs. Any Dewan¹ who advises his Prince not to join the Union is really acting as the enemy of Princes. . . .

¹The reference is to Sir C. P. Ramaswamy Iyer, Dewan of Travancore.

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